Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/43178/2013
IA/43179/2013

THE IMMIGRATION ACTS

Heard at Stoke	**Determination Promulgated**
on 17th December 2014	**On 22nd January 2015**

Before

UPPER TRIBUNAL JUDGE HANSON

Between

ASHRAF BIB
GHULAM RASHID
(Anonymity order not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Martin instructed by SKR Legal Solicitors.
For the Respondent: Miss C Johnstone Senior Home Office Presenting Officer.

DETERMINATION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge Thorne promulgated on 22nd July 2014 following a hearing at Stoke, in which the Judge dismissed the appeals of the above two Appellants

who are citizens of Pakistan born on 28th February 1958 and 1st January 1940. They are a wife and her husband respectively.

2. On 4th September 2013 the Appellants applied to leave to remain in the United Kingdom as they wish to stay with their son who they had come to visit. The Respondent refused the applications as the Appellants did not qualify under Appendix FM of the Immigration Rules, for although they were partners neither was a British citizen and they had entered on visit visas. The Appellants could not succeed under paragraph 276 ADE as they had not been resident in the United Kingdom for 20 years, were over the age of 18 years, and had not established that they had lost all ties to their country of nationality. It was also said that no exceptional circumstances existed sufficient to justify the grant of discretionary leave to remain outside the Rules.

3. Judge Thorne considered the written and oral evidence and submissions and notes at paragraph 29 that it was not disputed that the Appellants could not succeed under Appendix FM, and therefore dismissed the appeals under the Immigration Rules.

4. The Judge thereafter proceeded to consider the matter under Article 8 ECHR and noted that the evidence indicated the First Appellant had high blood pressure, diabetes and Alzheimer's dementia, and the Second Appellant suffered from impaired eyesight, multiple-joint pains, back pain, prostatic symptoms and urinary incontinence, although it was clear these symptoms existed before they travelled to the United Kingdom and that they had received treatment for the same in Pakistan.

5. It was found the evidence indicates they still own the family home in Pakistan and that their son was willing and able to provide them with all the financial support they needed and would be happy to do so "for the rest of their days". It was found there was inadequate evidence to establish they could not pay for medical help, physical care in the home, or for his parents to enter a residential home in Pakistan if required [34].

6. The Judge rejected the evidence regarding the ability or reliability of care received from family in Pakistan or that which could be expected in the future as lacking credibility which was found to be "vague and contradictory" [35]. It was found there was inadequate evidence to establish that the Appellants would not receive adequate medical help or physical care in the home or entry into a residential care home in Pakistan and there was inadequate evidence to establish that it is unreasonable to expect them to return and make an appropriate application under the Immigration Rules if they wished to settle in the United Kingdom, from Pakistan. The Judge found that as the Appellants had entered the United Kingdom as visitors neither could

claim to have a legitimate expectation that they would be permitted to remain [37] and it was found that there was inadequate evidence that the Appellants will be caused undue hardship by being removed to Pakistan. Whilst it may be the family's choice that the Appellants remain in the United Kingdom that does not engage the U.K.'s obligations under the ECHR and does not constitute compelling circumstances not sufficiently recognised under the Immigration Rules.

7. The Judge concluded that if Article 8 ECHR was being considered the decision of the Secretary of State had been shown to be proportionate.

8. This decision is challenged on grounds alleging:

   a. That it is the Appellants case they will be unable to look after themselves if returned to Pakistan due to their severe medical problems.

   b. The Judge failed to give the evidence of Tajammal Rashid sufficient prominence. It is submitted the evidence gave a picture of a severely housebound couple who needed assistance in the majority of their usual daily activities necessary for life.

   c. The evidence before the Judge was that one of two people looked after the Appellants in Pakistan, one was a son and the other was the niece. The only evidence regarding the niece was from the Appellants' and family that she had moved away. It is said there was no reasonable grounds for disbelieving the son was not in Pakistan as he gave evidence before the Tribunal. The grounds allege the Judge erred in law in the findings made in paragraph 35 regarding the level of care they could expect to receive in Pakistan and it is submitted failed to take into account the absence of family members to look after the Appellants on a day-to-day basis.

   d. It was accepted some of their medical conditions existed in Pakistan but said the evidence that they all existed and were of similar severity was not clear from the medical evidence before the Judge.

   e. The Judge erred in believing the Appellants had landed in the UK in March 2013, had returned to Pakistan, and subsequently looked after themselves as on arrival on 24th November 2012 they were refused entry but given temporary admission and a right of appeal, had a court hearing before the First-tier Tribunal at Stoke on 12th February 2013 and were thereafter granted discretionary leave for six months which expired in late

September 2013. It is stared that at no point did the Appellants leave the United Kingdom.

f. The grounds submit that the position of the Appellants is such that they have good grounds for being granted leave to remain outside the Rules because (a) they suffer a combination of medical problems requiring medication and day and night care to maintain a basic standard of living and (b) although some of the conditions may have existed in Pakistan there was clear evidence that the family carers had now moved away and were predominantly in the UK.

Discussion

9. Mr Martin's submissions referred to a previous determination arising from the hearing before the First-tier Tribunal in Stoke but accepted that a copy had not been provided to Judge Thorne. As such the Judge cannot be criticised for not considering the previous findings of the tribunal or for being unaware that the Appellants had not returned to Pakistan.

10. It was accepted by Mr Martin that time *per se* does not entitle an individual to succeed under Article 8 even if the Appellants have been in the United Kingdom since 2012.

11. I find there is no arguable material error in the determination that justifies the decision being set aside. Article 8 does not give individuals the right to choose the country in which they wish to live in and the family and private life relied upon has been created or enjoyed at a time when there was no legitimate expectation that the Appellants will be granted leave to remain.

12. The existence of medical conditions, so far as set out in the available evidence, was adequately considered by the Judge and these are not conditions brought on by the United Kingdom government. The grounds do not challenge the finding that the Appellants received treatment for their conditions in Pakistan and it has not been shown that such treatment or assistance as may be required is not available now or will not be available in the future. There is no obligation upon the UK government to provide medical treatment for the world especially as the cost of doing so to meet the various conditions the Appellants have could be considerable for a cash strapped NHS.

13. The assertion the Judge misled himself regarding the availability of support in Pakistan as the niece and a son who provided such care are no longer available to give such care has no arguable merit in relation to proving material legal error. The finding by the Judge in paragraph 36 is that there was inadequate evidence to establish that the Appellants would not receive adequate medical help, physical

care in the home or entry into a residential care home in Pakistan. The Appellants son indicated he will provide financial support for them and it was not shown that such support will not enable them to access the care they require, on a residential basis if required, or to employ a carer to help them in their home environment. They still possess the property in which they lived prior to coming to the United Kingdom which has not been shown to be unsuitable accommodation. The evidence regarding the lack of care available in Pakistan was also found to lack credibility.

14. It has not been established that there will be any impact upon the Appellants physical and/or moral integrity sufficient to breach Article 8 and although they wish to remain in the United Kingdom with family they have no right to do so without lawful leave to settle which has been refused. The Judge comments upon an ability to return and make an application and that is an option open to them if the requirements of the Immigration Rules can be met. In relation to this determination the Judge considered all the available evidence with the required degree of anxious scrutiny and has given adequate reasons for findings made. The weight given to the evidence was therefore a matter for the Judge. Any factual error regarding time in the United Kingdom based upon the failure of the Appellants to provide the Judge with the previous determination has not been shown to be material. Finding that the decision was proportionate when weighing the rights of the Appellants against the legitimate aim relied upon by the Secretary of State is within the range was findings the Judge was entitled to make on the evidence and, on the facts, appears to be the only realistic option open to the First-tier Tribunal. The purpose of Article 8 is not to permit a person to by-pass the Immigration Rules. It is to prevent unwarranted interference by the State in family and private life rights which exist. In this case any interference was found to be justified as being proportionate (Article 8(2)). Mere disagreement with the outcome or the desire for a more favourable decision does not establish arguable material legal error.

Decision

15. **There is no material error of law in the First-tier Tribunal Judge's decision. The determination shall stand.**

Anonymity.

16. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

    I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed…….
Upper Tribunal Judge Hanson

Dated the 21st January 2015