



IAC-AH-DN-V1

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

Appeal Numbers: IA/42129/2013  
IA/41661/2013

**THE IMMIGRATION ACTS**

**Heard at Bradford**

**On 23<sup>rd</sup> February 2016**

**Decision & Reasons  
Promulgated  
On 29<sup>th</sup> March 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE ROBERTS**

**Between**

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

Appellant

**and**

**[S S] (1)**

**[G Z] (2)**

**(~~ANONYMITY DIRECTION NOT MADE~~)**

Respondents

**Representation:**

For the Appellant: Mr M Diwnycz, Home Office Presenting Officer

For the Respondent: Mr M Karnick of Counsel

**DECISION AND REASONS**

1. These appeals arise as a result of the Secretary of State for the Home Department successfully seeking permission to appeal against the decision of the First-tier Tribunal (Judge Ransley) which in a decision dated

28<sup>th</sup> July 2014 allowed the appeals of both Respondents against the Secretary of State's decision of 20<sup>th</sup> September 2013 refusing to grant them leave to remain in the UK indefinitely and giving directions for their removal to Pakistan.

2. The appeals come before me by way of a protracted route. It necessary therefore to set out their history. First for the sake of clarity, throughout this decision I shall refer to the Secretary of State as "the Respondent" and to [SS] and [GZ] as "the Appellants" or individually as "husband" and "wife". This reflects their respective positions before the First-tier Tribunal.

### **Background**

3. The Appellants are nationals of Pakistan. They are husband and wife. Their respective dates of birth are [ ] 1942 and [ ] 1952. Their immigration history is as follows:

- They arrived in the UK on 2 March 1998 in possession of valid visit visas.
- On 23 July 1998 they applied for indefinite leave to remain as the dependants of their son living in the United Kingdom, but that application was refused on 8 November 1999.
- They subsequently appealed that refusal and subsequent decisions to refuse leave to remain unsuccessfully.
- They first raised Article 8 ECHR grounds on 5 August 2003 when they applied for leave to remain outside the Immigration Rules. That application was also unsuccessful.
- There followed numerous applications on human rights grounds, none of which were successful. These included an application in 2012 on the grounds that [GZ] was suffering from "severe mental ill-health" and therefore her article 3 ECHR rights would be interfered with if she were removed.
- Finally, in their latest application, they sought ILR because, they claimed, their rights under article 8 of the ECHR would be unlawfully interfered with based on their continuing deteriorating health problems. This application was refused by the Respondent on 20 September 2013. They appealed that refusal to the FtT.

### **The Hearings**

4. When the Appellants appeals against the latest refusal came before the FtT (Judge Law) that Tribunal, after hearing evidence, dismissed their appeals. The Appellant's successfully sought permission to appeal the FtT's decision to the Upper Tribunal. Deputy Upper Tribunal Judge Lewis found that FtT had materially erred in its decision. He therefore set that decision aside and remitted the matter to the First-tier Tribunal to be

heard afresh. The remitted appeal came before the First-tier Tribunal (Judge Ransley) on 11 July 2014. In a decision issued on 28 July 2014 the FtT allowed both appeals on Article 8 ECHR grounds.

5. The Respondent sought and was granted permission to appeal Judge Ransley's decision. The matter came before Deputy Upper Tribunal Judge Hanbury on 29 September 2014. Judge Hanbury found a material error of law in Judge Ransley's decision and once again the FtT's decision was set aside.
6. Following queries by both parties owing to a discrepancy in Judge Hanbury's original decision to set aside Judge Ransley's decision, Judge Hanbury amended his decision under Rule 42 of the Tribunal Procedure (Upper Tribunal) Rules 2008.
7. Following promulgation of that amended decision application was then made on behalf of the Appellants for Judge Hanbury's decision as a whole to be set aside under Rule 43 of the Tribunal Procedure (Upper Tribunal) Rules 2008. This was on the basis that it was unclear as to the outcome of the hearing of 29 September 2014.
8. This application came before UTJ Kebede who found as follows:

"It seems to me that there was some confusion as to the outcome of the hearing of 29 September 2014 and the nature of the decision made by Judge Hanbury in the initial version of his determination, leading to a request by both parties for clarification and amendment. The amended decision included a further paragraph dismissing the appellants' appeals, whilst it appears that the indication given at the hearing on 29 September 2014 was that the decision, if set aside, would be re-made at a resumed hearing on a future date. As the appellants' application suggests, it appears that the decision was accordingly re-made in the absence of clarification of the supporting evidence.

In the circumstances, in the interests of justice, and on the basis that there has been a procedural irregularity in the proceedings, I propose, in accordance with paragraphs 43(1) and 43(2)(d) of the UT Rules, to set aside that part of the decision of Deputy Upper Tribunal Judge Hanson (sic) re-making the decision by dismissing the appellants' appeals, and propose that the decision in the appellants' appeals be re-made at a resumed hearing in the Upper Tribunal. I see no reason to set aside Judge Hanbury's decision on the error of law. Accordingly the decision of Judge Ransley having been set aside, the appellants' appeals are yet to be determined and shall be listed for hearing in the Upper Tribunal."

Thus these appeals come before me for a resumed hearing in the Upper Tribunal; an error of law having been found in Judge Ransley's decision.



## **The Resumed UT Hearing**

9. Before me Mr Karnick appeared for the Appellants and Mr Diwnycz for the Secretary of State. I heard evidence from two witnesses; the first [FS], the son of the Appellants and their Sponsor and secondly from [QA], the granddaughter of the Appellants. In addition to the documentary evidence which was before the First-tier Tribunal, a further set of documents was served under cover of McManus Seddon Runhams' letter of 19<sup>th</sup> February 2016. These documents included the following:

- Witness statement of [FS] (sponsor/Appellants' son)
- Witness statement of [QA] (granddaughter)
- Witness statement of [NS] (granddaughter)
- Witness statement of [AS] (granddaughter)
- Witness statement of [SaS] (granddaughter)
- Letter from Bradford Teaching Hospital for [AS]
- Addendum report from Dr Saima Latif (psychologist)
- GP update letter for the Appellants' health
- Supporting letter from Khidmat Centre for the Appellants
- Accountant's letter for the Appellants' son

Mr Karnick also sought permission to submit an article from the **American Academy of Neurology**. This article is authored by a Dr Q Khan and is headed **Dementia: Challenges of Practice in Pakistan**. It is dated November 2014.

10. I heard evidence from [FS] who kept to the lines of his witness statement signed and dated 17<sup>th</sup> February 2016. His evidence focused on his parents' medical and social complaints. He said that his father's behaviour showed increasing amounts of confusion and aggression. He considered that this was a result of his father suffering heightened anxiety because of his immigration status or rather lack of it.

11. He outlined the intensive care which the family members give to his father. His father needs help with his day-to-day routine living needs. He needs help to get dressed, calmed down when he loses his temper and also needs encouragement to eat.

12. He said that he arranges his work as a taxi driver, so that he remains at home during the early part of the day and then when his children return

from college in the afternoon, he goes to work and the children take over looking after their grandparents.

13. Turning to his mother's situation, [FS] told me that she suffers from epilepsy and depression. She is unable to provide any care for his father. Her epileptic fits have increased recently because, he thinks, of his father's dementia and occasional aggressive outbursts towards her.
14. [FS] told me that his mother sleeps in the same room as his daughter. The family had to move his mother into a room away from his father because of the disruptive behavioural outbursts mentioned above. There have also been incidents when his father has wandered out into the street - the family were alerted on one occasion by a neighbour. In addition he now has to check on his father during the night because in the past he has woken up and gone to the kitchen at 2am, and tried to make his breakfast on an unlit gas hob.
15. Mr Diwnycz in cross examination asked the Sponsor what was preventing the Appellants from returning to Pakistan? [FS] responded that they would perish there as there is no home for them to go to and no-one available to look after them. He was asked whether any other family members could help in particular the Appellant's three brothers who remain in Pakistan. Could they offer meaningful support? Unsurprisingly the Sponsor replied that they could not. He said the youngest brother is in his 60s and contact with them ceased long ago. He asked why in the world would they take responsibility for his parents? They are elderly themselves and would not have the ability to provide the intensive care required to look after someone who is confused, prone to wandering unless checked, and who needs encouragement with day-to-day living.
16. Finally in response to Mr Diwnycz, the Sponsor said that if his parents were forcibly removed to Pakistan, he would have no choice but to go with them. He could not leave them there alone, nor could he abandon them. He would have to give up his work and a further intolerable strain would then be placed on his family. This would leave his wife having to cope alone with the family in the UK, three of whom have serious medical complaints. That concluded his evidence.
17. I next heard briefly from the Appellants' granddaughter, [QA]. She produced a witness statement signed and dated 18<sup>th</sup> February 2016. In that statement she confirmed that the whole family took part in caring for her grandparents. She said that if another family member is not available to help her grandfather, she assists him getting dressed in the morning. She said he sometimes refuses to do so and if she is unable to get him dressed, she has to call for her father or mother.
18. She said that her grandfather has a tendency to try and wander off so everyone in the family now has to keep an eye out for him. She also reported incidents of him throwing his food around and refusing to eat. He becomes irritated and uneasy. She said that the process of dealing with

him is a continuous one and as well as her parents, she too checks on her grandfather at night.

19. Finally she told me that her grandmother suffers from epilepsy as well as migraine attacks for which she has medication. She said that when at home, she shares a room with her grandmother so that she can be there for her during the night. She said she also helps her grandmother with her physical needs including assisting her to the bathroom. She said that both she and her sister take a share of helping with their grandparents in order to provide relief and help to their parents. There was no cross-examination of this witness.
20. I heard submissions from the representatives. Mr Diwnycz helpfully indicated that there was no real challenge to the evidence that I had heard, nor to the documentary evidence which had been produced on behalf of the Appellants. Suffice to say there were statements from the remaining members of the Sponsor's family confirming what he and his daughter had said. In addition there was medical evidence outlining the Appellants' present condition.
21. Mr Diwnycz further submitted he was content to rely upon the reasons for the Respondent's refusal decision dated 20<sup>th</sup> September 2013 together with the grounds seeking to challenge the decision of the First-tier Tribunal. He did accept however that matters had moved on since 2013, and that it was likely that the health of both Appellants had deteriorated. He submitted however, there needs to be shown compelling circumstances not sufficiently recognised by the Immigration Rules, which justify departing from them. He said the Respondent's case is that:
  - The Appellants cannot meet the requirements of the Immigration Rules.
  - There are sufficient ties with Pakistan to enable the Appellants to return there.
  - Their medical conditions although recognised are not such as to bring them within the high threshold of **J [2005] EWCA Civ 629**.
  - All these factors have to be weighed in the context that the Appellants had remained here outwith the Rules for many years and had become a considerable burden upon the UK NHS.
22. Mr Karnick accepted that the Appellants could not meet the requirements of the Immigration Rules. He submitted that pursuant to the decisions in **Gulshan [2013] UKUT 640** and **Nagre [2013] EWHC 720 (admin)**, it will be necessary for me to consider as Mr Diwnycz said, whether there are arguably good grounds for granting leave to remain outside the Rules and if so to consider whether there are compelling circumstances not sufficiently recognised under the Rules. In order to follow this through, it would be necessary to carry out the **Razgar [2004] UKHL 27** proportionality balancing exercise. He submitted that there was a wealth

of evidence to show that the circumstances of the Appellants fell within compelling circumstances. This included the level of dependency upon their son, their social care/ medical needs and the fact that there was no one who could reasonably be expected to look after their needs in Pakistan.

23. He pointed out further that although he must accept that the error of law finding of Judge Hanbury must remain as per Judge Kebede's directions, nevertheless it was his view that Judge Ransley had carried out precisely the process outlined above and which resulted in her decision that the appeals should be allowed.

## **Discussion**

24. I am satisfied that pursuant to the approach adopted in **Gulshan** and **Nagre**, there are compelling circumstances in these appeals which are not sufficiently recognised under the Immigration Rules. I find this to be so on the basis that both Appellants now have a dependency upon their son and grandchildren which is greater than the normal emotional ties between parents and adult children. I am satisfied that the evidence before me shows that because of the Sponsor's own family circumstances, it would be wholly unreasonable and impracticable to expect him to relocate to Pakistan to look after his parents there. I find that that would be the only option available to the Appellants.
25. I am satisfied therefore that the Article 8 ECHR rights of both Appellants are engaged so far as their family/private life is concerned. I therefore proceed by adopting the five stage process outlined in **Razgar**. It was submitted by Mr Karnick (and accepted by Mr Diwnycz) that if I found Article 8 is engaged, then what is in issue is the proportionality assessment. In other words is the refusal of indefinite leave to remain and the making of removal directions, in these circumstances, disproportionate?
26. What must weigh heavily against these Appellants is their immigration history. It is said in the documents before me that they have "cynically exploited" the Immigration Rules of this country and that "grants of leave outside the Immigration Rules should not be used as a means to circumvent the requirements of the Rules." I find this to be an unhelpful approach in this instance. What has to be looked at is the present situation of the Appellants and the weight to be attached to that as against any countervailing circumstances.
27. I fully accept little weight can be attached to family or private life formed at a time when a person's immigration status is precarious; it is correct to say that in these cases the Appellants have been in the United Kingdom for many years but with a precarious immigration status. Therefore their time in the UK does not give weight to their cause.



28. It is also a factor weighing greatly against the Appellants that both are receiving National Health Service treatment in this country, and that treatment for dementia and epilepsy amounts to a considerable expense to the tax payer. Although Mr Diwnycz generously indicated that there was no real challenge to the Sponsor's evidence, it has been noted elsewhere that the Sponsor was less than frank in his attempt to give the impression that he pays privately for his parents' medical fees. I am satisfied that the situation is that both Appellants access free services from the NHS.
29. What are the factors weighing against removal? Neither Appellant is in good health. Both suffer from what can be termed as age related diseases and in [SS]'s case there has been a marked deterioration in his dementia over the last eighteen months to two years. The medical evidence indicates that his disease has now advanced from early to moderate/severe dementia. He presents with episodic confusion and aggression. It is a progressive illness. He is cared for and looked after by his family in the UK, more particularly by his son and daughter-in-law. The medical evidence concerning his dementia is cogent and clear. It supports the Sponsor's evidence showing the intensive social care which is required to keep [SS] safe. Effectively [SS] lives his life in one room in his son's house where he is fed and kept clean and safe. He goes to the mosque on occasion and sometimes his family take him out for short walks but frankly (and this is no way meant to be a criticism) he lives a highly restricted lifestyle which will not get any better.
30. [GZ], although individually not requiring the same intensive care as her husband, nevertheless, frankly is not capable of caring for him, partly due to the fact that his condition means that he is aggressive on occasions towards her and this exacerbates her epilepsy. She too receives care from her son and his family, to the extent that she lives separately from her husband albeit in the same household.
31. I am satisfied that the evidence before me shows that there would be no-one in Pakistan, to whom the Appellants could turn, for support in receiving the intensive care which they need and receive from their family in the UK. Despite concerns being raised about the Sponsor's credibility in previous hearings I accept his evidence, that [SS]'s three brothers would be unable to help. Aside from the evidence that there is now little or no contact with those brothers, it stands to reason, that [SS] himself is 72 years of age and therefore his brothers are also elderly. It is unrealistic to expect those relatives to be in a position to give the care that the Appellants' require. In addition I accept that the Sponsor is the only child of the Appellants. Therefore there are no siblings in Pakistan available to help shoulder the responsibility of looking after the Appellants.
32. This brings me to the next major aspect of these appeals. The Sponsor told me, and I accept this, that the only option left to him, should the Appellants be removed, would be for him to leave the UK and relocate to Pakistan with them. He said he could not leave them to perish on their

own nor could he abandon them. For him to relocate with his parents, would in my judgment, present unjustifiably harsh consequences for the rest of his immediate family. First he would have to give up his employment. Secondly his family is already under considerable strain. Three of the five children suffer from debilitating illnesses. The family cope with this without any social services help.

33. It has been set out by the Respondent in some detail in her reasons for refusal letter at [42 to 46] the extent to which treatment for the Appellants is available in Pakistan. The USSD's Consular Information Sheet on Pakistan reports that:

*"Adequate basic non-emergency medical care is available in major Pakistani cities, but is limited in rural areas. Facilities in the cities vary in level and range of services, resources, and cleanliness ... generic brands from well-known pharmaceuticals usually are available. The quality of the locally produced medication is uneven."*

34. The Respondent further reports that the World Health Organisation Mental Health Atlas 2005 Pakistan stated that:

*"The primary sources of mental health financing in descending order are out of pocket expenditure by the patient or family, tax based, social insurance and private insurances. The country has disability benefits for persons with mental disorders. Mental health is a part of primary healthcare system. Actual treatment of severe mental disorders is available at the primary level. There are many residential and day care facilities, especially for people with learning disability providing social, vocational and educational activities.*

*... There are community care facilities for patients with mental disorders. More than 78 junior psychiatrists have been trained in community mental health to act as resourced persons in the development of programmes in their area."*

35. Mr Karnick however presented evidence in the form of a paper from Dr Q Khan, the source of this article being the **American Academy of Neurology**. The article is headed **Dementia: Challenges of Practice in Pakistan**. This outline that at the date of the article, Dr Khan was the only formally trained dementia specialist in Pakistan. He reports there are no behavioural, neurology or dementia training programmes for graduating psychiatry or neurology residents. He further reports that in 2012 two dementia clinics were established in Lahore and Islamabad. A national pharmaceutical company has also recruited some physicians to see dementia patients in various cities in Pakistan. Whilst I accept that this shows that there is some emerging dementia care available in Pakistan, the article goes on to say the following:

***"Social Services.** Alzheimer's Pakistan is a non-government national organisation that has set up a day care centre in Lahore with*

*the assistance of Alzheimer's Australia. There is no long term care unit on nursing home for patients with dementia and almost all of these people are cared for at home by their families. These care givers provide full assistance from the advanced stages of the disease until death without benefit of dementia counsellors, social workers, case managers or support groups."*

36. I accept the evidence produced in Dr Khan's paper entitled Global Perspective and I am satisfied neither Appellant could reasonably be cared for in Pakistan without the Sponsor being there to provide the required assistance in their day-to-day care.
37. I take into account as part of the balancing exercise, Dr Latif's expert report and addendum thereto. Dr Latif's report was not challenged. Dr Latif reports that removal of the Appellants would have a detrimental impact on the emotional functioning of three of their grandchildren. She ties this into their degenerative illnesses and their high degree of anxiety about their grandparents' uncertain immigration status. This is something that I am bound to have regard to when conducting the balancing exercise.
38. Drawing all these factors together into the balance it is clear to me that the relationship between the Appellants and their son is much greater than that of normal emotional ties between a parent/adult child. The dependency of the Appellants, because of their medical history outweighs the fact that they have remained in the country for numerous years with precarious immigration status. In my judgment they will not be able to access the medical resources available in Pakistan, without their son accompanying them back to Pakistan. In view of his family circumstances that would be unreasonable and would be unduly harsh. It follows therefore that to remove these Appellants on their own would be unduly harsh. Consequently for the foregoing reasons the appeals of both Appellants against the Respondent's decision of 20<sup>th</sup> September 2013 to refuse them indefinite leave to remain and remove them to Pakistan, are allowed.

## **Decision**

The decision of the First-tier Tribunal promulgated on 28<sup>th</sup> July 2014 contained a material error of law and is hereby set aside.

The decision is remade allowing the appeals of [SS] and [GZ] against the Secretary of State's decision of 20<sup>th</sup> September 2013 refusing them leave to enter and making removal directions.

The Appellants' appeals are allowed pursuant to Article 8 of the European Convention of Human Rights.

No anonymity direction is made.

Signed

Date: 29.03.2016

Deputy Upper Tribunal Judge Roberts