



IAC-FH-AR-V1

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

Appeal Number: OA/13832/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 1 April 2016**

**Decision & Reasons  
Promulgated  
On 15 April 2016**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE CHANA**

**Between**

**SHAKEELA RAFIQUE  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Miss C H Bexen, Counsel, instructed by Magna Solicitors  
For the Respondent: Mr C Avery, Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant is a citizen of Pakistan born on 20 September 1954. She appeals against the respondent's decision of 1 October 2014 to refuse her leave to enter the United Kingdom as a returning residence to join her British citizen husband. First-tier Tribunal Judge A E Walker dismissed the appellant's appeal against which she appealed. First-tier Tribunal Judge Nicholson granted permission to appeal stating that it is arguable that "freedom to mourn and participate in the funeral of a spouse is integral to a person's identity thus generally engaging private life".

2. First-tier Tribunal Judge Walker made the following findings in his determination. It was accepted that the appellant does not meet the requirements of the Immigration Rules and her appeal stood to be considered under Article 8. The judge noted that the appellant has lived in Pakistan for much of her life, is a highly intelligent woman who has made her own way in the world as she herself states. She achieved high academic achievement and was able to sustain a post at a good school as a teacher. I do not accept that she is without community ties in Pakistan. She clearly has friends there, as she says. It was accepted that were the appellant to live in the United Kingdom she would not be a drain on public resources as she has been comfortably left off by her late husband. It was also noted by the judge that she lives well within her means in Pakistan. There was also no suggestion that she has any medical condition and she still has a brother alive and living not too far from her in Pakistan.

3. The judge stated:

“I consider that the chain of events that unfolded at Heathrow in 2014 when she was detained the effect of which was that she was unable to attend her husband's funeral was lamentable and she has my sympathy for the situation that she found herself in. However, that does not change my findings that the appellant's ties are in Pakistan. I realise that her family are concerned for her and that she misses her children and grandchildren. However, these feelings would be able to be met by the appellant visiting her as she has done in the past. I do not accept the criticism that the respondent has levelled against her for previously applying as the dependant of her son. It is clear that she is a highly honest lady because that was the reason why she found herself in difficulty at Heathrow.”

4. It was said that her husband had died. The Border Agency staff would not have refused her entry on the visa she had. Therefore, the appellant does not meet the requirements of the Rules with regard to returning residents. The judge found at paragraph 31 that

“The appellant may continue to enjoy her family life by visits as she has done up to now and by modern means of communication. He noted that she seeks to maintain her relationship with her adult children all of whom have flown the nest, to quote the sponsor. It is a normal feature of life that adult children leave home and it does not follow that their parents have to live with them. It follows that I consider that the refusal does not interfere with the appellant's family life.”

and dismissed the appeal.

5. The grounds of appeal state that the appellant applied for a settlement visa as a wife of a British citizen which was granted in March 2014. The

appellant travelled to the United Kingdom on 15 April and her visa was curtailed because of the change of circumstances. The temporary admission she was granted was not in time to allow her to attend her husband's funeral. This was in breach of the appellant's private life and her right to participate in the funeral of her husband.

6. It is the appellant's case that since the death of her husband she is lonely and deserted. The judge when considering her human rights played little regard to the fundamental point in Strasbourg jurisprudence, namely that states have a positive duty to show respect for family life. The judge did not demonstrate a proper appreciation of the basic proposition that a person's family life depends on one another, socially, physically and emotionally particularly when there has been a determination in the family. The judge failed to give adequate and sufficient consideration to the fact that the appellant is lonely and depressed. There is a positive obligation on the state to foster family relationships.
7. In **EB (Kosovo) v Secretary of State for the Home Department [2008] UKHL 41** Lord Bingham reaffirmed that point made in **Huang v Secretary of State [2007] UKHL** at paragraph 18 that the Strasbourg jurisprudence recognise that Article 8 imposes on contracting states not only a negative duty to refrain from unjustified interference with a person's right to respect for his family but a positive duty to show respect for it. The judge failed to adequately consider the appellant's case.
8. The Rule 24 response by the respondent states that the Judge of the First-tier Tribunal directed himself appropriately in a lengthy and detailed determination. The judge considered the long and complicated history of this particular appellant including the unfortunate circumstances of losing her husband and not being able to attend her husband's funeral. However, taking a holistic approach to the findings it is difficult to see how Judge Walker erred in his assessment and findings. The appellant cannot succeed under the Rules and as the judge has observed, the status quo of visiting her adult children can continue and thus she can maintain a family life as she has done.
9. It was open to the judge to find that the appellant had no Article 8 protected family life with adult children. The grounds have no merit and the appeal should be dismissed.
10. At the hearing I heard submissions from both parties as to whether there is an error of law in the determination. Miss Bexen in her submissions set out the history of the appellant in that she is a 60-year-old lady and has had a long history of leave to remain in the United Kingdom and ostensibly has lived here for about eight or nine years of her life. She was very honest when she declared to the Immigration Officers at the airport that her husband had died the day before she landed. That was definitely in breach of her private life not to allow her to attend the funeral.

11. In respect of family life she argued that the appellant needs her children at this stage of her life and also has grandchildren in the United Kingdom. The appellant is in a vulnerable position in Pakistan as a woman living alone. She cited the case of **EB (Kosovo)** and said that the judge should have had regard to the cultural conditions in Pakistan.
12. Mr Avery in his submissions on behalf of the respondent stated that the basis of her entry clearance to join her husband is no longer sustainable because her husband has died. The Article 8 claim has no merit. The appellant has been living apart from her husband by her own choice with her children in Pakistan because the children went to schools there. The children are now adults. The judge took into account all the circumstances and said that the appellant can continue family life with visits to the United Kingdom as she has done in the past. The appellant should not attempt to circumvent the Immigration Rules because she can make an application from Pakistan to join her family in this country.
13. Miss Bexen in reply said that it was not an attempt to circumvent the Immigration Rules. The appellant does not have any family in Pakistan and all her family are here. She is an educated woman. She is a chemistry teacher and she will not be a drain on the financial resources of this country.

### **My Findings**

14. There is no dispute that the appellant does not meet the requirements of the Immigration Rules for a returning resident. Therefore, her appeal was considered pursuant to Article 8. The complaint made about the judge is that the judge did not consider the appellant's circumstances in totality and the fact that she is now left in Pakistan alone. The judge in his determination put much emphasis on the fact that the appellant has lived in Pakistan for most of her life and therefore can continue to do so.
15. The judge did not take into account that the appellant, when she lived in Pakistan lived with her children, even though she did not live with her husband who remained in this country. The judge also did not take into account that the appellant's circumstances have now changed and while she could live in Pakistan before as her children were with her, now that all her children and grandchildren are in the United Kingdom, she would be alone in Pakistan. This is why she decided to join her husband and her children in the United Kingdom but unfortunately her husband died the day before she arrived at Heathrow airport. Had she arrived a day earlier, she would have entered the country.
16. I therefore find that the judge made a material error of law in not looking at the appellant's circumstances at the present time and putting too much emphasis on her past circumstances. Circumstances are always evolving and a person's life evolves with them. The appellant has had two indefinite leaves to remain in the United Kingdom. She tried to come back as a

returning resident and could not meet the requirements of the Immigration Rules due to our husband's death.

17. In this instance I find that there are exceptional circumstances where she should be granted leave to remain under Article 8 even when she cannot meet the requirements of the Immigration Rules. All her family are in this country. She lived with her children in Pakistan. I accept that they are adult children but she has always attempted to live with them wherever they have been, first in Pakistan and now in the United Kingdom.
18. I do not think that the appellant would be able to now continue family life by visits, although I am not prejudging the situation, but it is commonsense that it would be a little more difficult for her to get leave to come to the United Kingdom to visit her children given her immigration record.
19. Be that as it may, I find that the appellant has demonstrated that her circumstances are not catered for within the Immigration Rules. This is a woman who lived with her husband who is a British citizen and now she is 60 years old and needs to be with her family. I accept Miss Bexen's submissions that the cultural aspects of the appellant's circumstances must be taken into account which is to be with her children for the remaining days of her life.

### **Notice of Decision**

18. I therefore set aside the determination of First-tier Tribunal Judge Walker and substitute my decision and allow the appellant's appeal under Article 8 of the European Convention on Human Rights in respect of her family life in this country.
19. Appeal allowed.
20. No anonymity direction is made.

Signed

Date 4 April 2016

Deputy Upper Tribunal Judge Chana

### **TO THE RESPONDENT FEE AWARD**

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award and have decided to make no fee award as none was requested.

Signed

Date 4 April 2016

Deputy Upper Tribunal Judge Chana