



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/03457/2017

**THE IMMIGRATION ACTS**

Heard at Field House  
On 13 August 2018 and 19 November 2018

Decision & Reasons Promulgated  
On 7 December 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

RAHMAT [K]  
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr A Bandegani, Ms J Elliott-Kelly (for Fisher Jones Greenwood)

For the Respondent: Mr S Kandola (Specialist Appeals Unit)  
Ms A Brocklesby-Weller (Specialist Appeals Unit)

**DECISION AND REASONS**

1. This is the appeal of Rahmat [K], a citizen of Afghanistan born 1 January 1973, against the decision of the First-tier tribunal of 14 March 2018 dismissing his appeal against the decision of the entry clearance officer to refuse his application for entry clearance as the adult dependent relative of the Sponsor, his brother Fazal [K].

2. The Sponsor explained in his witness statement of October 2015 that he arrived in the UK and claimed asylum; following an appeal hearing he was granted refugee status on 15 March 2010. He subsequently located his younger brother Hasan [K], and successfully sponsored him to join him in the UK as his dependent. Now Hasan was no longer financially dependent on him having entered full-time employment, though they continued to live together pending Hasan's forthcoming marriage.
3. The Sponsor had visited Pakistan in November 2014 with a view to seeking out his remaining brother, the Appellant, and located him fortuitously when he came across him begging on the road in Peshawar. The Sponsor learned that the Appellant had nowhere to stay and persuaded a local Afghan man, [JK], who ran a chicken farm to let his brother stay with him; he paid for his brother's board and lodgings there. He had last seen his brother when he was living in Laghman Province, Afghanistan, with the Sponsor's grandfather from his mother's side. Since their reunion they had maintained contact via telephone. The Appellant lived there because he and their father did not get on well because the latter would say that the Appellant was not his real son. However, the grandfather had developed cancer and had now passed away.
4. The application was refused because it was not accepted that there was adequate evidence that the DNA test had been conducted with all due propriety given the brothers lived in different countries; there was limited evidence of ongoing contact to prove they were as related as claimed, aside from photographs, and money transfer receipts for 2015/2016 did not demonstrate that the sums had actually been received by the Appellant. It was not accepted that his care needs in Pakistan were unmet given the reference to having had medical treatment at two hospitals there. The Entry Clearance Manager was unimpressed by the ensuing grounds of appeal and upheld that decision on review.
5. The First-tier tribunal heard oral evidence from the Sponsor. It noted that there was evidence from Anglia DNA of August 2015 detailing the procedures followed during the testing process and found this was adequate to establish the claimed relationship between the Appellant and Sponsor. The evidence regarding the remittance of sums for the former's support in Afghanistan was coherent and cogent and it was understandable that there was no further evidence of the receipt of those funds. So the history of financial support was also accepted as established.
6. That left the question of the Appellant's care needs. The First-tier Tribunal summarised the evidence before it. Dr Navid Sabir, an orthopaedic surgeon in Islamabad, had written in September 2015 that the Appellant suffered polio when he was aged three and that since then he had had no power in his lower limbs; he suffered from weakness in his hands. He could not wash or feed himself, and needed to be cared for by another person. Accordingly the Tribunal accepted that

the Appellant had shown that as a result of disability he required long-term personal care to perform everyday tasks.

7. The First-tier Tribunal also referred to the evidence of Uzma Moeen, whose report outlined her experience with the Asian Legal Advice Service at SOAS providing opinion evidence on various matters relating to law, religion and politics in Pakistan.
8. Ms Moeen's report set out her opinion that although policies, plans and legislation in relation to disability existed in Pakistan, they had not been implemented. Physical disability was widely perceived to have supernatural causes and was widely stigmatised. There had been little progress in the development of policies since the inception of public discussions on the subject in 1985. The disabled often faced the possibility of being treated as outcasts, and that eventuality might well face the Appellant.
9. All Afghan nationals had to register with the Pakistan authorities via the National Database and Registration Authority (NADRA). Identity cards were then issued to permit access to accommodation and education and other facilities. Whilst medical hospitals did not demand such cards for general treatment, they were required for specialised treatment, whether from government or non-government organisations. Absent NADRA registration one could not access these facilities. In May 2016 the Ministry of the Interior had announced a crackdown to safeguard national territory, and a major re-verification exercise was afoot in order to ensure that the identities of all those entitled to reside on the territory were confirmed. There was particular concern as to the issue of fake identity cards to Afghan national. Accordingly it could be reasonably foreseen that attempts to access medical treatment might well lead to one's detection as an illegal resident.
10. There was no real social awareness in the community of the needs of the disabled without family to support them, and there was nothing by way of community-based residential facilities. It was difficult to hire personal carers. Full-time care would cost 60-70,000 Rupees monthly. There were no national standardised criteria for caregivers who were mostly needy people themselves struggling financially, leading to a lack of trust and accountability, bringing with it a likelihood of ill treatment and insecurity. There was no governmental support available except for the poor. There was no legislative protection and the physically disabled were very vulnerable to crime; there were no real measures in place to prevent abuse.
11. The First-tier Tribunal summarises Ms Moeen's report as essentially giving her opinion that the Appellant as an Afghan residing in Pakistan would be unable to access any form of healthcare adequate for his needs. She had not met the Appellant, but had reviewed his file. She considered that healthcare in Pakistan was generally inadequate for the disabled.

12. The Judge found that Ms Moeen had not provided any analysis of the Appellant's actual medical and personal care needs. She did not denigrate the expert's clearly genuine beliefs as to the inadequacy of healthcare for the disabled in Pakistan, but found that these did not assist in determining whether the actual care that he received was adequate. The evidence did not establish those care needs. The most pertinent evidence was a letter from the hospital stating he was immobile and could not wash or feed himself, had used a wheelchair all his adult life which he could self-propel with some difficulty, and had no acute health issues. The Afghan farmer who had taken him in apparently provided him with food, took him to the washroom, took him out and about when needed, and bought any items the Appellant requested, and otherwise helped him, for example taking him to the clinic for DNA testing.
13. In the light of this evidence, it was not established that the Appellant had any significant care needs that were not presently being met. The fact his health had apparently not deteriorated over the two years since the application was refused indicated that his needs were being met. Accordingly he did not satisfy paragraph E-ECDR.2.5 of the adult dependent relative route under Appendix FM.
14. His claim under the Rules having failed, his case outside the Rules required assessment. It was unclear when the brothers were first separated but given the Sponsor's evidence was that he had not originally recognised his brother and that he had been in the UK since 2010, their family life was not significant, consisting only of very occasional visits by the Sponsor to Pakistan. Accordingly the immigration decision did not interfere with the Appellant's Article 8 rights. There were no exceptional circumstances present in the case, given the lack of pressing medical needs and it did not appear that there were any plans to expel him or his carer to Afghanistan.
15. Grounds of appeal of 26 March 2018 contended that the First-tier tribunal erred in law by
  - (a) Failing to appreciate that there were exceptional circumstances rendering the Appellant's exclusion from the UK unjustifiably harsh: particularly the severity of his disability, the fact the brothers had been displaced from Afghanistan, the Appellant's lack of immigration status in Pakistan, and the discrimination and social exclusion suffered by the disabled there;
  - (b) Failing to assess the existence of exceptional circumstances by reference to the test as to whether the Appellant's life abroad was unjustifiably harsh having regard to the strength of the family life, as enjoined by *Britcits*, and having regard to the Respondent's policy that the public interest was highly relevant to whether the relevant threshold was crossed which necessarily required particular attention given the Sponsor had given uncontradicted evidence that the Appellant's UK care needs could be met without recourse to public funds;

- (c) Failing to take account, when assessing family life, of the fact that their separation was compelled by necessity and that the Sponsor had shown a long-term financial commitment to the Appellant which had included finding temporary care arrangements for him abroad, the relative frequency of his visits to Pakistan given his work commitments, and his significant efforts to achieve their residence together;
  - (d) Failing to take account of the Appellant's precarious residence in Pakistan.
16. Permission to appeal was granted on 15 June 2018 on the basis that all the grounds were arguable.
17. Before me Mr Bandegani for the Appellant submitted that the Appellant had a viable claim outside the Rules. The First-tier Tribunal's treatment of that claim was legally unsustainable. There was no structured assessment applying the various stages of the appropriate analysis in an Article 8 case, and no attempt had been made to strike a "fair balance" as required by the Strasbourg authorities. This had led to material considerations being overlooked such as the precarious nature of the Appellant's residence in Pakistan and the circumstances leading to the separation of the brothers: this was a forced migration case. Furthermore there was no express consideration of the relevant public policy requirement identified in section 117B(3) which included the relevance of the credible evidence from the Sponsor that arrangements were in place such that there would be no recourse to public funds.
18. Mr Kandola replied that the decision was legally sustainable and the First-tier Tribunal had come to findings that were properly open to it. The question of exceptional circumstances had been addressed having regard to all relevant evidence. Once the appeal was considered outside the Immigration Rules then there was a very stringent test to be applied, and the Appellant had simply not met it.

### **Findings and reasons - Error of law hearing**

19. As already indicated, it was not suggested that this was a claim that could succeed under the Immigration Rules. Nevertheless those Rules remain relevant, as a measure of the distance between the human rights claim made and the general public policy position struck with respect to this broad class of case. At Appendix FM paragraph E-ECDR.1.1 onwards, it is clear that an applicant must "as a result of age, illness or disability require long-term personal care to perform everyday tasks"; it must be shown that care is not available "even with the practical and financial help of the sponsor because it is not available and there is no person in that country who can reasonably provide it; or it is not affordable." And the "specified evidence" provisions supporting those requirements require a report on

the available healthcare abroad from a central or local health authority or other health professional.

20. Those considerations must of course be assessed realistically, recognising that the Rule must be construed sensibly so as to be capable of satisfaction, see Sir Terence Etherton MR in *Britcits* [2017] EWCA Civ 368 §59: “Those considerations include issues as to the accessibility and geographical location of the provision of care and the standard of care. They are capable of embracing emotional and psychological requirements verified by expert medical evidence. What is reasonable is, of course, to be objectively assessed.”
21. The first question when assessing a claim outside the Rules is the establishment of family life ties. Here the First-tier Tribunal found that Article 8 rights were simply not engaged: i.e. there was no family life with which there would be a material interference between Appellant and Sponsor.
22. The decision of the Strasbourg Court in *Advic v UK* (1995) 20 EHRR CD 125 is sometimes cited for the proposition that the normal emotional ties between a parent and an adult son or daughter will not, without more, suffice to constitute family life: *Kugathas* [2003] EWCA Civ 31. Buxton LJ emphasised in *MT (Zimbabwe)* [2007] EWCA Civ 455 at [11] that *Advic*, “whilst stressing the need for an element of dependency over and above the normal between that of a parent or parent figure and adult child, also stresses that everything depends on the circumstances of each case”. The Upper Tribunal President wrote in *Lama* [2017] UKUT 16 (IAC) §32 that “at its heart, family life denotes real or committed personal support between or among the persons concerned.”
23. Ongoing contact by telephone with a disabled brother from whom one was separated due to the consequences of migration driven by the need for international protection (here confirmed via the grant of refugee status), combined with the ongoing provision of financial support, clearly creates a potential case for the recognition of family life, applying the test of whether there is “real or committed personal support”. However it is not possible to discern from the decision below whether the Judge was alive to the relevance of this test or to the factors potentially enlivening it. This is clearly a material error of law. It may well have contributed to the extreme brevity of the subsequent disposition of the appeal.
24. Section 117B of the NIAA 2002 provides:
 

**“PART 5A**

**Article 8 of the ECHR: public interest considerations ...**

**117B Article 8: public interest considerations applicable in all cases**

(1) The maintenance of effective immigration controls is in the public interest.

(2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—

- (a) are less of a burden on taxpayers, and
- (b) are better able to integrate into society.

(3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—

- (a) are not a burden on taxpayers, and
- (b) are better able to integrate into society.

(4) Little weight should be given to—

- (a) a private life, or
- (b) a relationship formed with a qualifying partner,

that is established by a person at a time when the person is in the United Kingdom unlawfully.

(5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious."

25. The Upper Tribunal stated in *Forman* [2015] UKUT 412 (IAC) that:

"In cases where the provisions of sections 117B-117C of the 2002 Act arise, the decision of the Tribunal must demonstrate that they have been given full effect."

26. In *Rhuppiah* [2016] EWCA Civ 803 §45, Sales LJ noted that "the starting point for consideration of the proper construction of Part 5A of the 2002 Act is that sections 117A-117D, taken together, are intended to provide for a structured approach to the application of Article 8 which produces in all cases a final result which is compatible with, and not in violation of, Article 8"; and §53 "Although a court or tribunal should have regard to the consideration that little weight should be given to private life established in [the specified] circumstances, it is possible without violence to the language to say that such generalised normative guidance may be overridden in an exceptional case by particularly strong features of the private life in question ...". That thinking was subsequently endorsed by the Supreme Court in *Rhuppiah* [2018] UKSC 58 §36, §42-44, and particularly §49), accepting that cases which are compelling outside the Rules and must be approached via the "need for a degree, no doubt limited, of flexibility in the application of Part 5A of the 2002 Act" *Rhuppiah* §42.

27. The essential requirement that Tribunal decision making takes account of the public interest factors identified by section 117B is therefore beyond doubt. Section 117B was not addressed by the First-tier Tribunal in terms. So the question then arose as to whether this failing was material to the decision making. It is possible

to imagine a scenario where the considerations identified in section 117B are addressed, expressly or by inevitable inference, without the statutory provision itself being set out. However, this was not such a case. There was clear evidence before the Tribunal below that the Appellant would not be a burden on public funds because of the measures put in place by the Sponsor, who had already overseen one sibling's arrival in the UK without any such burden arising. Yet this was not addressed.

28. There was a further error of law in the First-tier Tribunal's approach in relation to the question of the precariousness of the Appellant's residence in Pakistan. The Home Office Guidance Family Migration: Appendix FM Section 1.0b *Family Life (as a Partner or Parent) and Private Life: 10-Year Routes* (22 February 2018) states (very similar material appears in the *5-year Route Guidance* of October 2017):

**“Ability to lawfully enter and stay in another country**

The decision maker should consider the ability of the members of the family unit (both the applicant and others) to lawfully enter and stay in another country. The onus is on the applicant to show that it is not feasible for them and their family to enter and stay in another country for this to amount to an insurmountable obstacle. A mere wish, desire or preference to live in the UK is not sufficient.

An example of where it might not be feasible for the family to live together elsewhere might be where the sponsor has gained their settled status in the UK through a refugee route, and the applicant is of the same nationality. In the absence of a realistic third country alternative, the settled person's inability to resume life in the country of origin is likely to constitute an obstacle to family life continuing overseas. The decision maker should consider relevant country information (but may not seek to go behind any decision to grant refugee status).”

29. The 5-year Route Guidance also notes at paragraph 13(5)(d) that “Where relevant, the circumstances giving rise to the applicant being separated from” from the Sponsor are relevant. This Guidance is set out in the context of the identification of the kinds of “Exceptional circumstances” and “unjustifiably harsh consequences” which would justify departure from the normal consequences of consideration under the mainstream Immigration Rules. One appreciates that the Guidance was articulated outside of the context of Adult Dependent Relatives, but nevertheless it addresses very similar factual terrain, ie the situation in which government policy accepts that conditions abroad are insecure to the extent that they are unjustifiably harsh or present insurmountable obstacles to an existence compatible with appropriate respect for family and private life. It is important to have regard to such policy material in order to promote the general objective of consistency in decision making.
30. The Home Office Guidance is consistent with a principle long identified in the case law, as identified by the then President Ouseley J in the Immigration Appeal Tribunal in *H (Somalia)* [2004] UKIAT 00027: “It cannot be right to approach the



disruption to family life which is caused by someone having to flee persecution as a refugee as if it were of the same nature as someone who voluntarily leaves, or leaves in the normal course of the changes to family life which naturally occur as children grow up.” In another context, in *Rai* [2017] EWCA Civ 320 Lindblom LJ concluded that “Throughout his findings and conclusions with regard to article 8(1), the Upper Tribunal judge concentrated on the appellant's parents' decision to leave Nepal and settle in the United Kingdom, without, I think, focusing on the practical and financial realities entailed in that decision. This was, in my opinion, a mistaken approach.”

31. *H (Somalia)* makes clear that the circumstances of a family whose separation is driven by forced migration rather than personal choice should receive special attention. The Secretary of State’s Guidance stresses the difference between a case where there is the possibility of lawful residence for the family unit abroad. *Rai* shows that some family entry clearance applications need to be analysed with close attention being afforded the precise reasons for the relevant parties’ separation from one another. These principles were highly pertinent to the instant appeal but received no attention in the conclusions of the Tribunal below.
32. Furthermore, although the First-tier Tribunal assessed the human rights claim under the Immigration Rules by reference to the adult dependent relative route, it did not expressly assess whether there was a compelling claim outside the Rules having regard to those Rules as a benchmark by which to measure the viability of the Respondent’s human rights claim. Indeed it referred only the perceived requirement for “exceptional circumstances”.
33. Accordingly I found that the decision of the First-tier Tribunal was flawed by material errors of law. As the resolution of the appeal requires limited further fact-finding, it was appropriate to retain the matter in the Upper Tribunal for a final continuation hearing.
34. As I noted in the error of law decision, it would be necessary when re-determining the appeal to bear in mind that health problems may be highly relevant to the degree of dependency a migrant has upon their family here. In *GS India* [2015] EWCA Civ 40 Laws LJ wrote §86: “If the Article 3 claim fails ... Article 8 cannot prosper without some separate or additional factual element which brings the case within the Article 8 paradigm – the capacity to form and enjoy relationships – or a state of affairs having some affinity with the paradigm.” Also relevant would be the inability of both the Appellant and his present carer to lawfully reside in Pakistan.

### **Evidence and Submissions at the Continuation Hearing**

35. Limited further evidence was filed by way of an updated witness statement of November 2018 which set out that the Sponsor had now obtained alternative accommodation for the Appellant, from 5 October 2018, with a friend, [AK], who

the Sponsor knew through mutual friends. [AK] owned a woodcutting business in Pakistan. The Sponsor continued to visit his brother every 7 or 8 months, last doing so from mid-September to early November 2018; he provided [AK] with cash whilst in Pakistan, and also remitted funds back from the UK.

36. In oral evidence the Sponsor stated that the Appellant had left his former accommodation because it was no longer available to him. The farmer with whom he was staying had increasingly felt that he could not guarantee his own safety, as he could be removed from Pakistan at any time, and so had returned to Afghanistan. [AK] was also an Afghan national. Nobody else lived in the family home. The Sponsor's last trip to Pakistan was from September 2018 to 14 November 2018. His brother was not in a very good situation, he was having problems with his memory, was often sick, and lived in poor conditions. An ongoing concern was that his brother had converted from Islam to Christianity and would be killed if anyone found out. [AK] did not know of this.
37. Cross examined, the Sponsor stated that he had visited Pakistan in November 2014 to continue the search for his brother. Their maternal grandfather had died some time ago, he estimated that he had learned that he had died around three months before leaving Afghanistan himself. The arrangements for [AK] to take things over from the farmer had been made via a friend of the Sponsor, [BK], who was [AK]'s business partner. He had mentioned his family problems to this gentleman who had passed the information onto [AK]; the Sponsor then arranged to meet the latter, who agreed to look after his brother. The Sponsor had no real associates in Pakistan beyond [AK]. He talked to his brother often, asking him how he was and whether he needed help, for example because he had memory problems as well as physical troubles now.
38. Ms Brocklesby-Weller submitted for the Secretary of State that family life was simply not established on the facts here; there had been a lengthy separation of the brothers, who were adults who no longer shared any meaningful family life. The Immigration Rules could not be met and there was no medical evidence beyond that attesting to the Appellant's disability as a legacy of polio. Presumably he had been able to access some element of healthcare without repercussions, given there was no overt evidence of having suffered problems so far. The revelation re Christianity was a new development and lacked substance. The public interest in maintaining immigration control was not outweighed here, and the Appellant's mobility impairment did not justify the grant of entry clearance.
39. Ms Elliott-Kelly submitted that family life was clearly established here, there was an established blood relationship and regular financial remittances upon which the Appellant wholly depended. He had no family unit of his own in Pakistan and no prospect of finding any other family with whom to reside in Afghanistan, given his other brother had also migrated to the UK; the grandfather with whom they had previously lived in Afghanistan was now deceased. His disability made him particularly dependent in circumstances where he was previously street

homeless; he continued to have a somewhat itinerant lifestyle. He had clear long-term care needs. The direction of the public interest could be seen by the absence of an English language requirement for the disabled under the Adult Dependent Relative route in the Rules, and whether or not every aspect of the Rules was met the policy objectives therein were satisfied, bearing in mind the exception within the Rules at GEN3.3 which provided for the relaxation of some of the strictures of Appendix FM-SE. The Sponsor's original witness statement had referenced his brother's Christian beliefs; he could be killed if the information reached the wrong people.

### Findings and reasons – Continuation hearing

40. It seems to me that family life is clearly established in this particular case. There can be no serious doubt that the Appellant is dependent on the Sponsor, who has taken it upon himself to provide him with the financial remittances that are essential to secure his welfare in Pakistan; he has additionally overseen his care arrangements and realistically one must recognise that the Sponsor must represent the Appellant's sole hope of living a dignified life in the company of close family members rather than being consigned to relying on the temporary support of strangers. They previously lived together as a cohesive family unit, and were separated only by the consequences of forced migration (in the Sponsor's case, leading to the recognition of refugee status). There have been visits since they were reunited following the Sponsor's industry in tracking down his brother, so rekindling their family life. I have no doubt that there is here additional emotional and physical dependency exceeding the norm such that the Appellant is dependent on the Sponsor in the sense described in the authorities ranging from *Advic to Lama*.
41. Equally, there can be little doubt here that the immigration decision represents a significant interference with family life. Of course, the Strasbourg Court has held that the Convention includes no right, as such, to establish one's family life in a particular country (see, inter alia, *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, § 68, Series A no. 94; *Gül v. Switzerland*, 19 February 1996, § 38, Reports of Judgments and Decisions 1996-I; and *Boultif v. Switzerland*, no. 54273/00, § 39, ECHR 2001-IX).
42. Given that there is a genuine relationship between Appellants and Sponsor amounting to family life, it seems to me that maintaining the immigration decision does amount to an interference with that family life: that much can be seen by *Quila* in the Supreme Court as conveniently summarised by Aikens LJ in *MM (CA)* §116: "Lord Wilson concluded that the Supreme Court should "decline to follow" the rationale of *Abdulaziz* that Article 8 was not "engaged" by the IR under discussion. He justified not following *Abdulaziz* on the ground that it was an "old decision", that the distinction drawn in it between "positive" and "negative" obligations of the state had since been recognised as an "elusive distinction" and that subsequent ECtHR cases had accepted that the concept of interference with

family life was broader than it was believed to be in 1985. Therefore, the refusal of the Secretary of State to permit the non-EEA spouses to reside in the UK with their UK spouses must be an interference with the parties' Article 8(1) rights. Accordingly, "the only sensible enquiry can be into whether the refusals were justified" under Article 8(2)."

43. That leaves the question of proportionality. Where a family unit is essentially reuniting after a period apart, their situation must be analysed with some care. See Richards LJ in *SS (Congo) & Ors* [2015] EWCA Civ 387:

"35. ... the position in relation to the LTE Rules is different from that in relation to the LTR Rules in two distinct ways.

36. First, cases involving someone outside the United Kingdom who applies to come here to take up or resume family life may involve family life originally established in ordinary and legitimate circumstances at some time in the past, rather than in the knowledge of its precariousness in terms of United Kingdom immigration controls (as in the type of situation discussed in *Nagre*). Thus the ECtHR jurisprudence addressing the latter type of case, which was the foundation for the approach in *Nagre*, will not always be readily applicable as an analogy. A person who is a refugee in the United Kingdom may have had a family life overseas which they had to abandon when they fled. A British citizen may have lived abroad for years without thought of return, and established a family life there, but then circumstances change and they come back to the United Kingdom and wish to bring their spouse with them."

44. Doubtless there are some factors in favour of maintaining the immigration decision. The Appellant will not foreseeably be able to support himself, and so there is some risk that he will one day represent a burden on public funds. He will be joining an English-speaking family unit of adult brothers, but there is no evidence that he speaks the language himself. He does not meet every aspect of the Immigration Rules addressing Adult Dependent Relatives.

45. However, these factors are to my mind outweighed by other considerations, including the statutory criteria identified in section 117B of the Nationality Immigration and Asylum Act 2002:

- (a) The Appellant is a sibling stranded, abroad and alone, following the forced migration of family members for reasons over which he had no control;
- (b) He is especially vulnerable because he is disabled; the Home Office Guidance (though from another route within Appendix FM nevertheless of clear value by analogy) recognises that "a physical or mental disability could be such that in some circumstances it could lead to very serious hardship, for example due to lack of health care that amounted to an insurmountable obstacle";

- (c) It is clear that the Appellant faces some risk of returning to street homelessness given that his circumstances are not secure: the farmer with whom he previously resided felt himself compelled to depart Afghanistan because of the lack of residential security there – and as the European Court said in *Pretty v United Kingdom* (2002) 35 EHRR 1, para 65, “The very essence of the Convention is respect for human dignity and human freedom”;
  - (d) The Appellant meets significant aspects of the nearest relevant Immigration Rule, in that the evidence establishes that “as a result of age, illness or disability [he] requires long-term personal care to perform everyday tasks” (as the First-tier Tribunal found, a finding that I endorse), and although he can *temporarily* access sufficient care, the ongoing nature of that care, provided by compatriots without durable immigration status, is precarious in the extreme;
  - (e) Not only the Appellant's home but his very presence in Pakistan is precarious: a person subject to immigration control and without legal immigration status will always be at some risk of detection and expulsion, and the Home Office policy cited above understandably expressly recognises this factor – and this risk applies both to the Appellant and to his temporary Afghan carers; indeed another piece of Home Office guidance *Family reunion: for refugees and those with humanitarian protection* (Version 2.0; 29 July 2016) is of some analogical value, as it recognised that unjustifiably harsh consequences might include circumstances where one family member is left alone in a conflict zone or dangerous situation, and where there are no other relatives to turn to there, such that he would face a lack of durable support and be at risk of becoming destitute;
  - (f) In reality it seems there should be no significant recourse to public funds, because of the financial position of the Appellant’s siblings in the UK;
  - (g) Any lack of English language facility needs to be viewed in the context that the Adult Dependent Relative route does not require any such proficiency, doubtless recognising the fact that such individuals will live primarily with their families as primary carers;
  - (h) It is true to say that the Sponsor's original witness statement had referenced the family’s (including his brother’s) Christian beliefs: “Where my brother lies now no one know about us being from a Christian family”. This could clearly have repercussions for the Appellant if news reached those unsympathetic to the Christian cause in Pakistan.
46. It seems to me that overall the Appellant plainly has a very compelling claim that justifies a finding that the refusal of entry clearance represents a disproportionate interference with his private and family life. I accordingly allow his appeal.

Decision:

The decision of the First-tier Tribunal contained material errors of law and is set aside.

The appeal is allowed.

Signed:

Date: 3 December 2018

A handwritten signature in black ink, appearing to read 'M.A.S. Symes', with a long, sweeping underline that extends to the left and then curves back under the signature.

Deputy Upper Tribunal Judge Symes