Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/03288/2018

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 7 December 2018	**On 9 January 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

MS NADIRA MOBEEN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr S Juss, Counsel instructed by Connaughts Law
For the Respondent: Mr N Bramble, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, who was born on 11 July 1954 and who entered the UK as a visitor in 2014, appeals from the decision of the First-tier Tribunal dismissing her appeal against the decision of the respondent ("the Department") to refuse to grant her leave to remain in the UK as an adult dependant relative. The appellant did not claim to meet the requirements of E-ECDR.2.4, which are that the applicant must (as a result of age, illness or disability) require long-term personal care to perform everyday tasks. She relied on family life with her children in the UK which, it was argued, had endured since the last child had left Pakistan to settle in the UK in

2011. The First-tier Tribunal Judge found that family life had not been established in the UK that was protected by Article 8 ECHR. In the alternative, he found that the decision of the Department was proportionate in all the circumstances, and that neither Article 3 ECHR nor Article 8 ECHR would be violated on medical grounds, as her history showed that she had been under the regular care of her doctor in Pakistan, and there was no reason why that care could not continue on her return.

The Reasons for the Grant of Permission to Appeal

2. On 25 October 2018 First-tier Tribunal Judge Juliet Grant-Hutchison granted the appellant to appeal for the following reasons:

> "It is arguable that the Judge has misdirected himself for the following reasons:- (a) by finding that the appellant does not meet the low threshold of having a family life with her three children in the UK and when she lived in Pakistan, and (b) by not considering the social, emotional and psychological support that the appellant receives from her said children."

Relevant Background Facts

3. The appellant was a frequent visitor to the UK from 10 September 2007 onwards. The appellant last entered the UK as a visitor on 7 June 2014. She submitted an application for leave to remain on 22 January 2015 which was refused with no right of appeal on 17 March 2015. An application for a judicial review was received on 31 March 2015 and her judicial review claim was struck out on 27 June 2016. On 15 July 2017 the appellant made a further application for leave to remain.

4. In a covering letter, Farani Taylor Solicitors outlined her claim. They submitted that it would not be reasonable to expect her to leave the UK on account of her circumstances. Her husband had passed away in 2006. Until 2011 the appellant had resided with her daughter, [HB], in Pakistan. [HB] had then got married and moved to the UK. Since 2011 the appellant had been residing alone in Pakistan. In January 2013 the family home had burned down due to faulty wiring. The appellant therefore no longer had a home and she had been living with her niece. But her niece had now refused to continue to accommodate her. It would be too costly to rebuild her home, as it would have to be re-built from scratch. She had three children, all of whom resided in the UK. [HB] was a Doctor. All three children were financially independent.

5. The appellant suffered from arthritis and high blood pressure. She felt extremely lonely and alienated in Pakistan where she was entirely alone. She was entirely dependent upon her children in the UK, and she was particularly dependent upon her son, [FB], a British national who had been financially supporting her. [HB] was also extremely dependent upon her mother. Having recently given birth, she intended to go back to work on 10 July 2017, but that might not be possible if her mother was not there to

support her. The appellant had private medical insurance in place, and would not be relying on public funds or NHS services.

6. On 11 January 2018 the Department gave their reasons for refusing the application. She stated in section 10 her application form that she had distant friends and relatives in Pakistan. Accordingly, she could reconnect with them on her return. She could also maintain regular contact with her UK-based family via modern forms of communication, and it would be open to them to visit her in Pakistan.

7. She said that her house had burned down, and she had nowhere to return to in Pakistan as her niece could no longer accommodate her._However, in section 5 of her application form, she stated that her son financially supported her in the UK. Accordingly, there was no reason why he could not continue to support her in Pakistan, including providing her with accommodation.

8. She stated that she had a very close bond with her family and did not wish to return to Pakistan while they remained in the UK. However, she had only entered the UK as a family visitor, which was not a route to settlement. She was therefore aware that this did not entitle her to remain in the UK indefinitely. She had previously remained in Pakistan whilst her children were based in the UK, and so she could continue her relationship with them via modern means of communication and visits.

The Hearing Before, and the Decision of, the First-tier Tribunal

9. The appellant's appeal came before First-tier Tribunal Judge Brewer sitting at Taylor House on 14 September 2018. Mr Juss of Counsel appeared on behalf of the appellant.

10. In his subsequent decision, the Judge summarised the oral evidence at paragraph [24]. The appellant was a widow, who did not wish to return to Pakistan. It was her preference to remain with her children in the UK. She lived with her son. (He also said that she lived with her daughter, but this was a mistake. The evidence was that her daughter lived separately with her spouse: see paragraph 9 of [HB]'s witness statement.)

11. Her arthritis gave her pain in her hands. Her daughter had qualified as a doctor in Pakistan, but was not practising as a doctor in the UK. She regularly monitored the appellant's blood pressure and reminded her to take her medication. When her mother was in Pakistan, she used to call her from the UK to remind her to take her medication. Food was cooked for the appellant and shopping was done for her. She was left alone during the day when her son was at work. She went swimming and essentially looked after herself.

12. Although the children could afford to house their mother in Pakistan and to provide care assistance, servants would not be trusted and Karachi was a dangerous city in which to live.

13. The Judge made the following findings of fact about the appellant's material history. She suffered from hypertension and arthritis in her knees and back. In 2015 she was diagnosed with mild depression. Her hypertension was diagnosed in, and had been treated from, 2007. In 2003 she was treated for Hepatitis C. The latest medical evidence was 25 June 2018. It seemed that the only medication she was on was for her high blood pressure. The report stated that the arthritis affected her household duties including cleaning, vacuuming and heavy shopping. The appellant went swimming and painted watercolours. Before she came to the UK, the appellant lived in the marital home, but that burned down in 2014. After that the appellant moved in with her niece, but that could not continue as her room was required for use by the niece's father-in-law.

14. At paragraphs [26]-[33], the Judge gave his reasons for dismissing the appellant's appeal under the Rules. Mr Juss had submitted that there would be very significant obstacles to the appellant returning to Pakistan. The Judge found that the appellant was educated, and that she had not given evidence of any difficulties that she might face on return other than needing somewhere to live, not being able to trust anyone who was hired to help care for her, and the fact that she had some medical issues. The Judge found that the evidence did not disclose anything that went beyond inconvenience and mere difficulty, and he concluded that the requirements of Rule 276ADE(1)(vi) were not met.

15. The Judge went on to consider whether Article 8(1) was engaged from a family life perspective. At paragraphs [38]-[41], the Judge cited extensive passages from the authorities on this issue, including paragraph [46] of **Gurung & Others, R (on the application of) -v- SSHD [2013] EWCA Civ 8**, where the Court of Appeal approved an observation of the Upper Tribunal in **Gissing** that, "*the different outcomes in cases with superficially similar features emphasises to us that the issue under Article 8(1) is highly fact sensitive.*"

16. At paragraph [42] the Judge held as follows:

> The appellant has been living in the UK since 2014. Prior to that, she had been living in Pakistan all her life. Her children decided to make lives in the UK, the last of them arriving in 2011. The appellant has made regular visits to the UK to see her children. It seems to me that if one is looking for more than the normal emotional ties which a family inevitably has, it is difficult to say that family life, in the sense required by an Article 8 claim, does exist in this case. While the appellant's children gave evidence of the extent to which they look after their mother, it seems to me they do that because she is present in the UK. Before her arrival they cared for her but from a distance, and I see no reason why that could not continue if the appellant was to return to Pakistan. I find that the appellant does not enjoy family life in the UK beyond that which she enjoyed when in Pakistan other than she now has the convenience of co-location with her children and what that entails. If the appellant was in Pakistan, her children could still provide for her, they can house her, pay for carers, check she is taking her medication, and in effect either directly or indirectly do all of the things they currently do.

17. At paragraph [43], the Judge said that, for the sake of completeness, he would consider the remaining **Razgar** questions, should it be argued that the family life which did exist was protected by Article 8(1), ECHR. He went on to find that the threatened interference was proportionate.

The Hearing in the Upper Tribunal

18. At the hearing before me to determine whether an error of law was made out, Mr Juss developed the case put forward in the grounds of appeal to the Upper Tribunal. In reply, Mr Bramble adopted the Rule 24 response settled by a colleague, which was to the effect that the grounds of appeal settled by Mr Juss were no more than an eloquent disagreement with findings that were reasonably open to the Judge on the evidence. Mr Bramble submitted in the alternative that even if the Judge had erred in finding that Article 8 was not engaged, there was no material error as he had given adequate reasons for holding that the refusal was nonetheless proportionate. Mr Juss' rejoinder was, as he had pleaded in the grounds of appeal, that the error in respect of the finding on family life could not be cured by the Judge assessing proportionality on the hypothetical basis that family life was in fact protected by Article 8(1) ECHR.

Discussion

19. There are two dimensions to the Judge's finding on family life in paragraph [42]. The first is that the family life which the appellant enjoys with her children in the UK is not such as to meet the criteria of **Kugathas**. The second and related finding is that the family life which the appellant enjoys with the children in the UK can to all intents and purposes be replicated in Pakistan.

20. These are bold findings. On the face of it, the mere fact that the appellant has resided under the same roof as one of her sons, [FB], since 2014 as a cohabiting dependant, is enough to justify a finding that the **Kugathas** criteria are met. Similarly, while the Judge envisaged the children in the UK providing support to the appellant from a distance, as they had done between 2011 and 2014 when the appellant was "alone" in Pakistan, the amount of emotional support that they would be able to provide from a distance was going be considerably less than if the appellant was residing in the same country as her children.

21. On the other hand, the Judge had the benefit of receiving oral evidence from the appellant and two of her children, and he was not bound to take at face value the appellant's evidence that she needed her children's support in many respects, "*including moral, physical, emotional and financial support*": or her son's evidence that his mother required care*, "both emotionally and physically."*

22. Mr Juss submits that the Judge failed to acknowledge evidence from three medical professionals, two in the UK and one in Pakistan, which supported the case that the appellant was emotionally dependent on her children. The doctor who had been treating the appellant in Pakistan opined that she needed to be in close proximity to her children to function normally. Dr Staples in the UK opined that socially the appellant needed help, and that this social help was not available in Pakistan, whereas in England her children would be able to help her. Dr Halari, the appellant's Clinical Psychologist in the UK, said that the appellant felt tense and unhappy in Pakistan, and found it difficult to sleep at night, because she was missing her children and worrying that if something happened to her she would be alone and without her children. She opined that it was in her best interests to remain in the UK where she would be able to access the necessary family support - whereas living in Pakistan, particularly over time, would have a significant negative impact upon the appellant's social and emotional wellbeing.

23. While it is true that the Judge did not acknowledge the evidence cited above, the obvious limitation in its probative value is that the views expressed are based upon the appellant's self-reporting of her symptoms and of her social situation in Pakistan. A key factual finding by the Judge which is not challenged as being erroneous is that the appellant was only asked to leave the niece's accommodation because her room was required for the niece's father-in-law. So, on the face of it, the only barrier to the appellant resuming family life with her niece was a practical one, and it was a barrier which could be overcome by the appellant's children funding accommodation in Karachi which was big enough to accommodate the appellant, her niece, her niece's father-in-law and any other family members who form part of the niece's family unit.

24. In conclusion, I am not persuaded that the findings made at paragraph [42] are perverse or inadequately reasoned, particularly when these findings are set alongside the earlier findings of fact made by the Judge which I have summarised at [13] above.

25. I am reinforced in this conclusion by the undeniable fact that the appellant is only living with one of her three children; and that the thrust of the evidence was that the appellant was wholly financially dependent upon the son with whom she was living, whereas the claim of emotional dependency was principally centred on the appellant's daughter, who is living elsewhere with her settled spouse in a separate family unit.

26. Even if the Judge erred in not finding that *"the low threshold"* of family life was met with regard to one or more of the children in the UK, I am not persuaded that the error was material to the outcome of the proportionality assessment. Although the appellant was not eligible to make an in-country application for leave to remain as an adult dependant relative under Appendix FM, there was nothing to prevent Mr Juss from running an argument that the substantive requirements of paragraph E-ECDR.2.4 were met, as indeed was asserted by Farani Taylor Solicitors in

the covering letter sent with the application. I infer that Mr Juss did not run such an argument as he rightly recognised that the evidence fell short of establishing that the substantive requirements were met. Hence, he only advanced a case under Rule 276ADE(1)(vi); and there is no error of law challenge to the Judge's finding that there are not very significant obstacles to the appellant's reintegration into life and society in the country of return.

27. The appellant entered the UK as a visitor, and she did not therefore have a legitimate expectation of being able to remain in the UK on the grounds of either having enduring family life with her children or on the basis of having established family life with her children since her arrival as a visitor. It was open to the Judge to find that the evidence tendered in support of the appeal was not sufficiently compelling to justify the appellant being granted Article 8 relief outside the Rules. It was open to the Judge to find that the Department's decision was proportionate in all the circumstances.

Notice of Decision

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

Anonymity

The First-tier Tribunal did not make an anonymity direction, and I do not consider that such a direction is warranted for these proceedings in the Upper Tribunal.

Signed Date 13 December 2018

Deputy Upper Tribunal Judge Monson