Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/06414/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 14 December 2018	**On 31 January 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE HANBURY

Between

MASHOOD AHMED
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Shilliday of counsel
For the Respondent: Mr Tufan, Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. Mr Ahmed appeals against the decision of Judge of the First-tier Tribunal Widdup (the judge) to dismiss his appeal. Permission to appeal was given by Judge of the First-tier Tribunal Landes on 12th October 2018. In granting permission Judge Landes identified that the judge, arguably, had failed to properly analyse medical and other evidence in relation to the appellant's circumstances in Pakistan. In particular there was evidence in

relation to the extent to which his father cared for him and was going to travel to the UK in the future. The evidence, as summarised in the decision, may have been inconsistent with other parts of the evidence but may have been not properly understood by the judge and not properly reasoned. It was also said by Judge Landes in relation to ground 4, that there was said to be no evidence that the father did in fact want to come to the UK. Judge Landes was critical of grounds 1 and 2 which attacked the Immigration Judge for giving the wrong date, referring to the date of decision rather than the date of the hearing as being the crucial date. Judge Landes considered that there were arguable grounds for attacking the decision of the First-tier Tribunal and he granted permission on all grounds subject to taking the view that in relation to grounds 1 and 2, he did not consider these had merit.

Background

2. The appellant, who was born in Pakistan on 25 January 1991, applied to come to the UK on 10 December 2016 to settle (family reunion) under Part 11 of the Immigration Rules. His intention, according to the application for entry clearance, was to join his mother [TB], his mother, who is described in his application as the "sponsor". At that time she lived in Feltham having been given refugee status following her arrived into the UK in 2012. It seems she claimed asylum on arrival in July 2012 which was granted in 2013. He is an Ahmadi Muslim and he has been in the UK, as I understand it, since 2013. She claimed to have been given indefinite leave to remain in the UK. It seems that the appellant's father remained in Pakistan living with the appellant. The appellant's application to join her mother in the UK was refused by the ECO on 3rd March 2017. The appellant appealed on human rights grounds on 19 May 2017. The decision was reviewed by the Entry Clearance Manager (ECM). Mr Shilliday, who also represented the appellant before the First-tier Tribunal, indicated to the judge that the appellant's father had never applied for entry clearance and did not know whether he would apply for entry clearance. The sponsor, at the time of the hearing and I assume presently, lives with her brother who gave evidence before the First-tier Tribunal. The evidence before the First-tier Tribunal included evidence in relation to the appellant's medical health which was set out from approximately page 97 of the bundle of documents which was provided. The documents suggested that the appellant may have been suffering from a neurological disease, was unable to walk or concentrate when learning and he needed the support of his family to maintain his daily routine. However the evidence before the First-tier Tribunal suggested that he could walk "but not briskly" and his condition was improving. There was further evidence of a neurological deficit of some description, but perhaps of an unspecific type, one doctor describing him as suffering from some defects in his "locomotive system" since birth who had difficulty performing normal household activities. Having reviewed the basis for the appellant's claim that his right to a private or family life under article 8 of the European Convention on Human Rights (ECHR) would be infringed if he were not allowed to join his mother in the UK, the judge dismissed the appeal.

The hearing before the Upper Tribunal

3. Before the Upper Tribunal, in his helpful submissions Mr Shilliday summarised his attack on the First-tier Tribunal's decision. He stated that the date of the decision was not the correct date for the consideration of the facts. They should have been considered at the date of the hearing. He said there was an inadequacy of reasoning and the judge had reached conclusions which were not open to him on the evidence that was before him. The findings of fact were also skewed by a failure of analysis. He referred me to paragraph 36 of **SS (Congo) [2005] EWCA Civ 387** which Mr Tufan, who appears for the respondent, helpfully provided to the Tribunal. Paragraph 36 of that decision states that:

> "… (in) cases involving someone outside the United Kingdom, who wishes to come to the UK to resume family life, provided that family life was established in ordinary and legitimate circumstances at some time in the past, rather than precariously in the knowledge that it is in breach of UK immigration controls, the European Court jurisprudence addressing the latter type of case which was the foundation of the approach in **Nagre** would 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 family life there, but the circumstances change, and they may wish to come to the UK and bring their spouse with them."

4. It is right at this juncture also to refer to paragraph 40 of that decision, where the Court of Appeal pointed out the wide margin of appreciation is allowed to individual states in determining the conditions to be satisfied before leave to enter is granted. This contrasts with applications for leave to remain by persons who are in the UK already, where different considerations may apply. In particular the tribunal or court will need to look at the extent to which family or private life has been established in the UK. It is also right, as Mr Shilliday pointed out, to indicate that a distinction appeared to be drawn between those cases involving the new Immigration Rules, those were introduced in 2012, and the earlier Rules, which were not necessarily human rights' compliant.

Discussion

5. Two paragraphs in the current Immigration Rules were considered by the Entry Clearance Officer and subsequently by the Entry Clearance Manager when determining this application under the Immigration Rules – 352 D and 319V. It was accepted by Mr Shilliday, both at the First-tier Tribunal and before the Upper Tribunal, that his client did not qualify under either of those Rules. However, I observe the that paragraph 319V (at Phelan's Immigration Law Handbook at 992) only facilitates an application by a

relative of a refugee in the UK in circumstances where there are, for example, the "most exceptional compassionate circumstances". Mr Shilliday suggested that test might be too high a test to surmount and was not necessarily compliant with Article 8(1) of the European Convention on Human Rights, I suggested that might be an argument which would need to be taken before a higher court possibly on an attack on the basis that provision is not human rights compliant. The Immigration Rules provide the benchmark against which the current application was rightly judged, without which it would not be possible for the ECO to fairly determine the application. The acceptance that the appellant did not satisfy either of the Immigration Rules was, in my view, a significant matter which the Immigration Judge was entitled to take into account, therefore.

6. Turning to the decision itself, in summary the Immigration Judge considered all the evidence that was before him which he summarised at paragraphs 12-24 and I consider reached conclusions that were open to him. Referring to the grounds of appeal, ground 1 alleges a material "misdirection of law". In so far as the judge referred to the "date of the decision" as being the date when he should look at the evidence, as he appeared to suggest in paragraph 42 of his decision, he was wrong to do so. However, it is clear that he did consider all the evidence, including evidence pertaining to the date of the hearing, in so far as there was any material change. This included both oral evidence from the sponsor and her brother and an affidavit from the appellant's father. I am satisfied that he fully considered that evidence in reaching his decision. Ground 2 criticises the judge for failing to give adequate reasons for rejecting the father's evidence. I remind myself that the ground, along with ground 1 considered earlier in this paragraph, were described by Judge Landes as having little apparent merit. The judge was entitled to attach little weight to the affidavit sworn by the appellant's father. The affidavit was, in his view, not a reliable document. Ground 3 addresses the alleged failure to give adequate reasons. In relation to the medical evidence, which was crucial to the appellant's case, the judge concluded that there was no evidence of symptoms or as to the effect of the various problems from which the appellant was suffering. He did not regard the medical evidence as being adequate, stating that "I attach little weight to one of the letters" (that from Dr Hussain of 22 July 2018) and he did not find the mother's evidence particularly helpful either. He was prepared to accept that the appellant had mobility problems, but he found that in parts the sponsor's evidence was lacking in credibility. Judge Landes criticised the judge for concluding that the appellant was adequately looked after in Pakistan or giving inadequate reasons for concluding (at paragraph 56) to the contrary. He is also criticised for not taking proper account of the appellant's uncle's evidence. The appellant's uncle is only recorded as having said that the appellant could live with them him, although he was in receipt of benefits. However, he also took account of the fact when Mr Tahir visited Pakistan he found the appellant to be in "very good condition". Therefore, there is little in this ground either. The final ground on which the appellant takes issue with the First-tier Tribunal's decision

(ground 4) states that the appellant was being cared for by his father. It is argued before the First-tier Tribunal that conclusion that the appellant's father was caring for his son was wrong and the judge should have concluded that the existing arrangements "cannot possibly continue". Judge Landes thought there was "evidence that the father did want to come to the UK". In my view the judge was entitled to conclude that the appellant was adequately catered by his father living in Pakistan and if the father was to make an application to come to the UK he could do so. No doubt at that stage the situation could be reappraised. Medical evidence could be produced at that time.

Conclusions

7. The judge carried out a balancing exercise in paragraphs 66 and 67. He took into account the appellant's mobility problems, his level of dependency on both parents and the extent of financial support (the evidence suggested that the appellant's mother sent money from time-to-time to assist her son, not that he was wholly financially dependent on her). Clearly the judge considered it desirable for their separation to come to an end, but the appellant is, and was, an adult. However, but there were other factors to be taken into account and these were considered at paragraph 67, where it was stated that it was unclear what the intentions of the father were. If the appellant's father intended remaining in Pakistan, there was no reason why the existing arrangements should not continue.

8. The judge did not consider he had been presented with a clear and consistent account of the appellant's father's circumstances by the mother and son, and as far as the appellant's mobility problems were concerned, he is able to walk, and had a life outside the home. But, according to paragraph 67 of the decision, there were other family members in Pakistan and therefore he was not socially isolated at the time of the hearing. The judge also took into account the public interest factors in Section 117B of the 2002 Nationality, Immigration and Asylum Act 2002, including the public interest applicable in all cases of ensuring the maintenance of effective immigration controls and the desirability ensuring that those admitted to the UK are less of a burden on taxpayers. The fact that the appellant would depend on NHS treatment for his mobility problems, had never lived in the UK and had a number of family members abroad were all factors the judge was entitled to take into account when deciding whether there was an unlawful interference with the appellant's protected human rights.

Decision

9. In all the circumstances, I have decided that that the judge considered the evidence before him and reached sound conclusions. If there was an error in relation to the statement in paragraph 42 that the date of the decision was the date at which evidence was considered, I am satisfied that this was not a material error. I am satisfied judge actually considered the evidence as at the date of the hearing. Although other judges might have

reached a different conclusion, this was one that the judge was entitled to come to on that evidence. I therefore dismiss the appeal to the Upper Tribunal.

10. No anonymity direction is made.

Signed Date 14 January 2019

Deputy Upper Tribunal Judge Hanbury

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed Date 14 January, 2019

Deputy Upper Tribunal Judge Hanbury