Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/08553/2018

THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre	**Decision & Reasons Promulgated**
On 8 February 2019	**On 01 March 2019**

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

MS MAJIDAN BIBI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Khan, Syeds Solicitors
For the Respondent: Mr Tan, Home Office Presenting Officer

DECISION AND REASONS

1. In a decision sent on 11 September 2018 Judge Turnock of the First-tier Tribunal (FtT) dismissed the appeal of the appellant, a citizen of Pakistan, against the decision made by the respondent on 26 March 2018 refusing to grant leave to remain on private and family life grounds. The appellant, who is aged 72, last came to the UK on a visit visa on 7 June 2017.

2. The main points raised in the appellant's grounds as amplified by Mr Khan were that the judge had erred in:

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(1) conflating the test of very significant obstacles under paragraph 276ADE with the different, more demanding, test of insurmountable obstacles;

(2) failing to properly consider the affidavit evidence regarding the appellant's circumstances in Pakistan and the extent to which her needs were not being met there, together with her own evidence that she now had no place to live; and

(3) failing to consider the Article 8 rights of the grandchildren.

3. I record my gratitude to Mr Khan and Mr Tan for their excellent submissions.

4. It is apposite to take grounds (2) and (3) first. As regards ground (2), I am not persuaded that the judge misunderstood or failed to properly weigh all the evidence relating to the appellant's previous circumstances in Pakistan or her likely circumstances on return. The judge summarised the contents of these affidavits in some detail at paragraphs 44–49. It was entirely within the range of reasonable responses for the judge to find that the evidence did not establish that the appellant had been abandoned by her second son. The affidavits were essentially aimed at explaining why family members there could no longer look after and support her; they did not suggest that if she had no-one else to turn to they would turn their back. Further, this evidence did not explain why the appellant would have transferred her property to her second son in December 2016 if she had not received an assurance that they would not abandon her. The judge heard evidence from the appellant's daughter who did not say that the appellant had been abandoned, only that the appellant's son in Pakistan and his wife are too busy and do not look after her.

5. I also consider the judge's assessment of the extent of the appellant's care needs to be congruent with the evidence considered as a whole. Mr Khan submits that the judge failed to have regard to the appellant's practical day-to-day needs, but it seems to me that that is exactly what the judge did, stating at paragraph 56–58 as follows:

> "56. The Appellant clearly understands how life in Pakistan operates. The Appellant is not in good health, but it is not suggested that she cannot communicate with other citizens of Pakistan. The Affidavits produced from witnesses currently residing in Pakistan confirm that to be the case. The issue is whether her current health conditions and claimed lack of support mean that although she would have the ability to communicate and integrate she would not be able to do so practically because she would be unable to take care of herself and has no-one who could provide that support for her.
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> 57. The medical evidence sets out the health problems which the Appellant faces although the detail of the impact of those upon her is not provided. The Report simply concludes that 'These multiple medical problems affect her daily life and she should be considered for help and support'.

> 58. The Appellant did have accommodation in Pakistan and it is not submitted that would not be available on her return. Her evidence was, however, that the accommodation was not suitable for her needs and there is a lack of support. However, the Appellant did return to Pakistan on 17 November 2016 and the evidence is not clear as to what caused the situation to deteriorate to such an extent that when she returned to the UK on 7 June 2017 Mrs Bibi expressed the concerns which are outlined in her statement. The Appellant claims that the attitude of her son changed following the transfer of the property in Pakistan to him, but that took place on 23 December 2016 which was some 6 months prior to her return to the UK in June 2017".

6. Mr Khan takes issue with the judge's focus on the appellant's situation under the dependent relatives rule at paragraph 77, but I agree with Mr Tan that in the context of the Article 8 proportionality assessment that was a relevant consideration, since if the judge had been satisfied that she met those Rules, that would have reduced the public interest in requiring her to go back to make an entry clearance application.

7. Mr Khan takes issue with the judge's assessment that the appellant had not established that her physical and mental condition meant that she could not manage in Pakistan without outside care. However, I consider that the judge's assessment at paragraph 79 that:

> "79. I find that this is a finely balanced case. There are factors in favour of granting leave, but I do not consider they are such as to outweigh the public interest factors. In particular I had regard to that the absence of independent evidence as to the impact on the Appellant of her health conditions and the lack of independent evidence of the absence of health care facilities in Pakistan. On the basis of the material before me she would not be able to succeed in an entry clearance application. The Immigration Rules should not be circumvented by the application of Article 8 in the absence of compelling circumstances."

was consistent with the evidence viewed as a whole. As the judge correctly highlighted in paragraph 77, there was no medical evidence from a doctor or other health professional that the appellant's physical and mental condition meant that she could not perform everyday tasks.

8. On the issue of the availability of outside care, it must also be borne in mind that the judge accepted that the appellant was financially dependent on her sponsor and found at paragraph 78 that they are able to provide financially for her. At paragraph 42 the judge recorded the sponsor's evidence as being that although he had a big mortgage and his expenditure had gone up, "they would do what they could". I note further that the judge considered it significant that the appellant had been able to return to Pakistan in November 2016. Although the judge made no specific finding on the issue, the evidence before him did not establish that on return to Pakistan the appellant would not receive any more financial support from the sponsor. (If necessary the sponsor would also

be able to assist in finding persons able to provide help with her care, or in finding persons who could help her find such persons.)

9. As regards ground (3), the simple fact of the matter is that the appellant has not been a regular part of the grandchildren's lives and her own evidence was that she still wanted to live in Pakistan: see paragraph 34. There is no suggestion that the grandchildren's best interests are not being met by their parents and there was no evidence produced to show that her ties with them were over and above those between a visiting grandparent and children.

10. In relation to ground (1), Mr Khan is right to identify that the judge twice referred erroneously to the test of "insurmountable obstacles", stating at paragraph 61:

> "61. I find that the Appellant would be able to return to Pakistan and re-integrate into that country and would not face insurmountable obstacles in doing so. I accept that her life would be more difficult in Pakistan than in the UK but that does not mean that she faces insurmountable obstacles to her return".

However, I am not persuaded that this resulted in any material error. At paragraphs 52–58 the judge identified "very significant obstacles" as being the requirement the appellant had to meet under paragraph 276ADE of the Rules and correctly directed himself in relation to its meaning. The judge also gave sound reasons for concluding that the appellant had not shown there were very significant obstacles. The paragraph in which the judge refers to insurmountable obstacles comes straight after a paragraph finding that the evidence showed only that the appellant's son in Pakistan was unable to provide the level of care she desired. That was a factor that went to the issue of very significant obstacles – irrespective of whether the judge described the relevant test correctly at paragraph 61.

11. The appellant was someone who had failed to meet the requirements of the Immigration Rules and in respect of whom there were several section 117B considerations weighing against her case, including lack of English, lack of financial independence and precarious immigration status. The judge's proportionality assessment was entirely within the range of reasonable responses.

12. For the above reasons I conclude that the judge did not materially err in law and accordingly his decision to dismiss the appeal must stand.

No anonymity direction is made.

Signed: Date: 25 February 2019

H H Storey

Dr H H Storey
Judge of the Upper Tribunal