



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

Appeal Number: HU/11281/2018

**THE IMMIGRATION ACTS**

**Heard at Field House  
on 19 July 2019**

**Decision & Reasons Promulgated  
On 15<sup>th</sup> August 2019**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE SUTHERLAND WILLIAMS**

**Between**

**IMTIAZ MAQBOOL  
(NO ANONYMITY DIRECTION MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr I Jarvis, Home Office Presenting Officer

For the Respondent: Ms S Iqbal, Counsel, instructed by Lincoln's Solicitors

**DECISION AND REASONS**

1. This is an appeal against the decision of First-tier Tribunal Judge Hughes ('the judge'), promulgated on 3 April 2019, dismissing the appellant's appeal against the respondent's decision to refuse his application for entry clearance.
2. The appellant is a citizen of Pakistan. On 8 March 2018, he appealed against the decision of the respondent to refuse him entry clearance for the purpose of permanent settlement with his brother (the sponsor) as an adult dependent relative, on the grounds that the decision was not in accordance with section 6 of the Human Rights

Act 1998: it being incompatible with the appellant's rights under Article 8 of the European Convention on Human Rights.

3. In granting permission to appeal, Upper Tribunal Judge Smith indicated:

"It is arguable that the judge, when considering the medical and other evidence, failed to take into account the issue of whether there was a person in Pakistan that could provide the care, in particular given the evidence that the appellant could not deal with strangers (and had always been cared for by family members of whom none were left there) and the medical evidence that the care he receives from his brother currently in Pakistan could not be replicated within a specialist care facility for those reasons. That is also arguably relevant to whether there exists a family life between the appellant and the sponsor and the weight to be given to family life."

4. It is against this background that the appeal is listed before me.

#### *The Home Office's position*

5. Relevant to the outcome of this onward appeal was a concession made by the Home Office Presenting Officer at the outset of the hearing.
6. Mr Jarvis indicated that having reviewed the First-tier Tribunal's decision, he was satisfied that the judge had made a material error at paragraph 29 of the decision, in that the judge was wrong to note that the appellant only required simple, attentive regular care. That, he maintained, had not been the evidence.
7. Reflecting paragraph 6 of the grounds of appeal, the presenting officer referred to the need for the appellant to be cared for by his brother, the sponsor, or those he was close to, having never been cared for by any other person except very close family members.
8. Mr Jarvis maintained the judge had mischaracterised the nature of the evidence and further, he had seen today for the first time new medical evidence from two doctors (which he indicated he would not object to being admitted as evidence) and on the basis of those letters, together with the other evidence, would invite the tribunal to set aside the decision and allow the appeal.
9. For the reasons given below, that is the course I am proposing to take, but I think it right that I say something about this appeal more generally before re-deciding the substantive matter.

#### *Factual background*

10. The appellant is a 53-year-old man with Down syndrome and autism. There is evidence to suggest that the appellant has a mental age of

only six, and that his life expectancy is relatively short, with evidence that those with Down syndrome typically die when they are under 60 years of age, (if living in the UK).

11. The appellant lived with and was cared for by his parents in Pakistan until their deaths and thereafter he was cared for by his sister, until she died.
12. It was at that point that it fell upon the sponsor to look after his brother, the appellant. As a result, the sponsor moved to Pakistan from the UK in August 2017 and has subsequently been his brother's principal carer. It is maintained there are no other family members living in Pakistan.
13. The judge accepted that the appellant could not live alone, that he was profoundly deaf and could not communicate verbally.
14. I do not understand any of the above facts to be disputed, and I find accordingly. The conclusion I draw is that the situation is undoubtedly very difficult.
15. The judge found the sponsor and his son were credible witnesses with a genuine concern for the appellant's welfare. He was satisfied that the appellant met the financial requirements of Appendix FM, and that he could be adequately maintained, accommodated and cared for in the UK without recourse to public funds.
16. The judge was also satisfied that the appellant required long-term personal care to perform everyday tasks, accepting the medical evidence and evidence of the sponsor and his son in that regard.
17. The sponsor had wanted to return to the UK because this is where his family is. His wife is said to be in poor health.
18. I adopt the First-tier Tribunal's findings in this regard, including the positive credibility findings made by the judge.

### *Discussion*

19. I hesitate to go into further detail, in the light of the Secretary of State's concession, but it is important for me to record that, at least on one view, the judge's determination is a comprehensive and well-constructed explanation for why this appeal failed. I am allowing this appeal primarily as a result of the Home Office's concession.
20. In terms of the law, the appellant needed to meet the eligibility requirements for entry clearance as an adult dependent, namely E-ECDR 2.5:  

'The applicant... must be unable, even with the practical and financial help at the sponsor, to obtain the required level of care in the country where they are living, because -

- (a) it is not available and there is no person in that country who can reasonably provide it; or
- (b) it is not affordable.'

21. The judge found, in what may be described as the nub of this appeal, that:

"The appellant does not require specialist medical attention facilities, but I am satisfied that he requires social care and support with many of the activities of daily living. I am not satisfied on the available evidence that such social care is not available in Pakistan. The high point of the evidence before me is that of Dr Mughul, namely:

'[the appellant] cannot be rehabilitated to the extent that may enable him to be looked after within the setting of the very limited specialist care facilities based in Pakistan. Unfortunately, he will have to remain dependent on his brother, like a little child who has never learnt the basics of daily needs - basic natural routine such as washing himself, dressing or bowel control...'

I find this evidence to be internally inconsistent; the appellant does not require specialist care facilities, but rather simple attentive regular care. The sponsor was asked in cross-examination whether he had made contact with any organisation that could provide help, to which he replied, '*they said he was too old*'. This evidence was unsupported, and I note that Dr Mughul's evidence above made no reference to age being an issue.

I acknowledge that the optimum care would be from a family member, but there is no reason why one or more persons from outside the family could not provide this care, gaining the appellant's trust and confidence through regularity and continuity of care. This would meet the sponsor's genuine concern that 'the appellant is only happy with people familiar to him'. I am satisfied that this would meet the 'required level of care'. The appellant has not demonstrated on the balance of probabilities, and on cogent independent evidence...that such care is not available in Pakistan or that it is not affordable."

22. It appears to me that these were findings the judge was entitled to make for the reasons given. It appears the judge took the view that following a sufficient introduction and period of familiarisation, a carer in Pakistan (who was not a family member), would have become known to the appellant and could have acted then as his home carer. I do not consider this to be speculation, but a legitimate observation to make bearing in mind the evidence and the burden placed upon the appellant. Such an option may have avoided moving the appellant from his home and country of origin where he has lived all of his life. This may also have met Dr Ghafoor's concerns that he needed to be looked after by someone he knows and trusts.

23. I raise this issue because I think it important to note two points: firstly, however difficult the circumstances of the case, it is necessary for a judge to stand back from the more emotive aspects of the evidence and consider the case in a detached manner. It may be that another judge might have come to a different conclusion on the evidence, but providing that the judge's conclusions and reasons are sustainable, the Upper Tribunal should normally be slow to interfere.
24. Secondly, the right to appeal to the Upper Tribunal is only on a point of law arising from the decision made by the First-tier Tribunal. If there is no error of law in the First-tier Tribunal's decision, the decision should stand (per *UT (Sri Lanka) v Secretary of State for the Home Department* [2019] EWCA Civ 1095). The Upper Tribunal is not entitled to remake a decision of the First-tier Tribunal, simply because it does not agree with that decision. Equally, the Upper Tribunal should not rush to find a misdirection simply because it might have reached a different conclusion on the facts.
25. On one view therefore, the judge has made adequate findings of fact, given adequate reasons, and adequately applied the law.

#### *Further evidence*

26. I bear in mind the judge did not have the further evidence provided to the Upper Tribunal at the hearing before me. I can only assume that this further evidence was requested in part to answer the judge's findings in this regard.
27. As it is, the letter from Dr Khan, dated 5 July 2019, confirms that the appellant has always been cared for by close relatives and that the required level of care cannot be provided other than by his present carer in Pakistan. He adds: 'I know of no institutions in Pakistan which are equipped to provide the level of care required without adversely damaging his physical and mental health'.
28. This does not entirely assist with the point that the judge was making, which was if managed correctly, a carer in the home would following an introductory period, no longer be a stranger.
29. The further letter from Dr Shahzad, dated 8 July 2019, seeks to make clear that the care required for the appellant cannot effectively be undertaken (because of his family circumstances) other than by his elder brother. He states that to force care by others upon him would be an act of cruelty. He further states that the required care is neither available nor can be provided in Pakistan. He does not provide an explanation in answer to the judge's point that through regular and continuous contact a new relationship could have been formed with a carer from outside of the immediate family.

#### *My decision*

30. Having explained my hesitancy, Mr Jarvis pointed out that I was not required as a matter of law to follow the Secretary of State's view. He is of course correct in that regard.
31. However, in circumstances where not only has the Secretary of State conceded the appeal on the basis of an error of law, but has also road-mapped the outcome, by inviting me to set aside the decision and allow the appeal, it is very difficult for me to take a different course, not least because if Judge Hughes had known at the time that the Secretary of State was prepared to make such a concession, undoubtedly he would have allowed this appeal and therefore the matter would never have reached this Upper Tribunal.
32. Understandably, Ms Iqbal on behalf of the appellant had little to add to the grounds of appeal, in the light of the Secretary of State's concession.
33. Essentially by consent therefore I set aside the decision of the First-tier Tribunal and admit the further evidence provided by the appellant, namely a letter from Dr Imran Asghar Khan, dated 5 July 2019 and a letter from Dr Ahmad Shahzad, dated 8 July 2019.
34. I allow this appeal on the basis of the concession by the Home Office that on balance a person from outside the family could not provide the appellant with the required level of care. There was no evidence of someone outside of the family ever having gained his trust or having cared for the appellant beforehand.
35. It follows that I accept the concession made by the Home Office that even with the practical and financial help of the sponsor, the appellant is unable to obtain the required level of care in Pakistan because it is not available (per the supporting medical evidence) and no person in that country can provide it.

### **Notice of Decision**

**The decision of the First-tier Tribunal sitting in Hatton Cross on 30 January 2019 under reference HU/11281/2018 is set aside.**

**AND**

**The appeal is allowed.**

No application was made for anonymity in this appeal. The general rule is that hearings are held in public and judicial decisions are published (*A v BBC* [2014] UKSC 25) and I saw no reason to depart from the general rule in this case.

Signed 

Date 5 August 2019

Deputy Upper Tribunal Judge Sutherland Williams