



Upper Tribunal

(Immigration and Asylum Chamber)

Appeal Number: HU/20666/2018

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THE IMMIGRATION ACTS

Heard at Manchester Civil Justice Centre

Decision & Reasons Promulgated

On 9 July 2019

On 18 July 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE BIRRELL

Between

MARYAM ZAHOOR AHMED

NASIRA ZAHOOR

(ANONYMITY DIRECTION NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms G Patel instructed by Amjad Malik Solicitors

For the Respondent: Ms E Groves Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.
2. The Secretary of State for the Home Department brings this appeal but in order to avoid confusion the parties are referred to as they were in the First-tier Tribunal. This is an appeal by the Secretary of State against a decision of First-tier Tribunal Judge Fox, promulgated on 4 April 2019 which allowed the Appellant's appeal and held that it was disproportionate and unlawful under Article 8 of the European Convention on Human Rights to refuse their human rights claim

Background

3. The Appellants A1 and A2 are a daughter and mother born on 19.8.93 and 5.4.1970 respectively although the year of birth given for A1 in the refusal letter is 1993. They are nationals of Pakistan.
4. In the Appellants entered the UK as the dependence of a foreign diplomat in November 2013 when A1 was therefore 20 years old. They were included in successive applications on the basis of exemption from control ultimately valid until 11 May 2018. On 6 October, 2017 may apply for leave to remain on the basis of family and private life.
5. On 22 September 2018 the Secretary of State refused the Appellant's application. The refusal letter gave a number of reasons. In respect of A2 the Appellant was not a eligible to apply under Appendix FM as a partner or parent her partner was not British or settled in the UK and because she lives as part of a family unit with A1. This was therefore considered as a private life claim. The Respondent did not consider that there were 'very significant obstacles' to A1s reintegration in Pakistan and she had lived there for the majority of her life, she had family that could support their and she could speak the language. In respect

of A1 there were no very significant obstacles to her reintegration in Pakistan as she had lived there throughout her childhood, for her formative years and a proportion of her adult life and has visited Pakistan in 2015. The refusal letter also considered whether A1s circumstances amounting to to exceptional circumstances recognising that she suffered from cerebral palsy, was wheelchair bound and unable to communicate well verbally. The letter noted that support for sufferers from cerebral palsy was available in Pakistan at the AGA Khan University hospital which are found at multiple locations around Pakistan and the Movement for Independence of Disabled a charity based in Lahore provides support in the form of psychological support for people with cerebral palsy to help them gain a degree of independence. It was noted that the Appellant was not in receipt of any form of regular medication and the specialist equipment she used could be brought to Pakistan. It was noted that the Appellant was cared for solely by her mother and this could continue on return to Pakistan where her father would be available for additional support.

The Judge's Decision

6. The Appellant appealed to the First-tier Tribunal. The parties agreed that the only issues were Articles 3 and 8 and paragraph 276ADE (paragraph 15)
7. First-tier Tribunal Judge Fox ("the Judge") allowed the appeal against the Respondent's decision. The Judge found that
 - A2's appeal was dependent on that of her daughter.
 - The expert evidence is that medical services are not available in Pakistan (AB 61)
 - There are no adequate 'care arrangements' for adults only children and this was confirmed by at Aga Khan hospital.
8. Grounds of appeal were lodged which raised a number of issues and on 9 May 2019 Designated Judge Shaerf granted permission only in respect of those matters raised at paragraphs 6-16 which I summarise as follows:
 - (a) The Judge made contradictory findings in respect of A1s father and his ability to assist in her care.

- (b) The Judge has failed to make adequate findings in respect of Article 8 and the public interest factors in s 117B of the Nationality Immigration and Asylum Act 2002 relevant to the proportionality exercise.
 - (c) There was nothing exceptional about the Appellants circumstances to warrant a grant of leave outside the Rules.
9. At the hearing I heard submissions from Ms Groves on behalf of the Respondent that:
- (a) She relied on the grounds.
 - (b) The Appellants had lived in China and therefore there were inadequate reasons why care would not be available in Pakistan.
 - (c) The Judge fails to identify what care the Appellant receives in the UK that she could not get in Pakistan.
 - (d) Given that the Judge did not accept that the father was no longer in the picture the findings in respect of 276 were inadequate as they failed to take into account the network of available support.
10. On behalf of the Appellant Ms Patel submitted that :
- (a) The Appellant is an adult and the letter was clear no support was available for adults.
 - (b) The Judge had documentary evidence of her medical needs and heard oral evidence as to the social support she receives in the UK in the form of attendance at a day care centre that would not be available in Pakistan.
 - (c) On the evidence before the Judge what private life could she have in Pakistan beyond her immediate family: in the UK she is meeting people and socialising.
 - (d) The Appellants condition has deteriorated since she went to China.
 - (e) While acknowledging that a different Judge may have come to a different conclusion she argued that the reasons given were adequate.
11. In reply Ms Groves on behalf of the Respondent submitted:
- (a) The Appellant will face very significant obstacles wherever she lives.

(b) In relation to her medical care the Appellant mother is her main carer as she has no ongoing medical needs.

(c) There was no evidence that trained caregivers were unavailable in Pakistan.

The Law

12. Errors of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on facts or evaluation or giving legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

13. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue under argument. Disagreement with an Immigration Judge's factual conclusions, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law.

14. As to the duty to give reasons I take into account what was said by the Court of Appeal in MD (Turkey) [2017] EWCA Civ 1958 at paragraph 26:

"The duty to give reasons requires that reasons must be proper, intelligible and adequate: see the classic authority of this court in Re Poyser and Mills' Arbitration [1964] 2 QB 467. The only dispute in the present case relates to the last of those elements, that is the adequacy of the reasons given by the FtT for its decision allowing the appellant's appeal. It is important to appreciate that adequacy in this context is precisely that, no more and no less. It is not a counsel of perfection. Still less should it provide an opportunity to undertake a qualitative assessment of the reasons to see if they are wanting, perhaps even surprising, on their merits. The purpose of the duty to give reasons is, in part, to enable the losing party to know why she has lost. It is also to enable an appellate court or tribunal to see what the reasons for the decision are so that they can be examined in case some error of approach has been committed."

15. I have also considered the guidance given in UT Sri Lanka [2019] EWCA Civ 1095 which reminds us of what was said in AH (Sudan) v Secretary of State for the Home Department at [30]:

“Appellate courts should not rush to find such misdirections simply because they might have reached a different conclusion on the facts or expressed themselves differently.”

Finding on Material Error

16. Having heard those submissions I have reached the conclusion that the Tribunal made no material errors of law.

17. At the core of this case is the Judge's finding (paragraph 39) that in fact the Appellants met the requirement of Paragraph 276ADE vi of the Rules. In those circumstances given that the Rules are intended to promote consistency, predictability and transparency in decision-making where issues under Article 8 arose, and to clarify the policy framework and to reflect the Government's and Parliament's view of how, as a matter of public policy, the balance should be struck between the right to respect for private and family life meeting the Rules addresses Article 8. Thus in TZ and PG [2018] EWCA Civ 1109 at paragraph 34 the court stated

“... where a person satisfies the Rules, whether or not by reference to an article 8 informed requirement, then this will be positively determinative of that person's article 8 appeal, provided their case engages article 8(1), for the very reason that it would then be disproportionate for that person to be removed.”

18. Thus I am satisfied that in finding that the Appellants met paragraph 276ADE vi there was no additional requirement to make separate findings under s 117B of the NIA 2002 as the grounds suggest as Article 8 is deemed to be met.

19. The only issue therefore is whether the Judge gave adequate reasons for the finding that the Appellants met the requirements of 276ADE vi in relation to the very significant obstacles faced in reintegrating reminding myself that the test is one of adequacy and no more, or as the Court of Appeal stated is her reasoning

'tolerably clear': the test is not whether the decision could have been better expressed or could a Judge on the same evidence come to a different conclusion.

20. I accept that it would have been more helpful if the Judge had started by setting out the nature of the test under paragraph 276 ADE vi, what amounts to 'very significant obstacles', as this was the core of the case, rather than listing a number of more generic cases (paragraph 9). A reference to guidance given in Kamara [2016] EWCA Civ 813 for example would have been helpful in explicitly clarifying that integration is not confined to the simple provision of health care as Ms Groves appeared to suggest whether by the Appellants parents or a hospital but also should be an assessment of her capacity to participate in life in her home country, so as to have a reasonable opportunity to be accepted there even if this was on the limited basis dictated by her health, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private and family life . The refusal letter it seems to me to a limited degree recognises this in suggesting that support was available in Aga Khan Hospital but importantly in referring to the charity that assists in helping the disabled to gain a level of independence which recognises the social and rehabilitative element of treatment.

21. This was the context in which the Judge considered the medical evidence produced by the Appellants, to rebut what was claimed to be available in the refusal letter, to address both any medical needs she had but any social rehabilitation available that might assist the Appellant in having a life outside of the confines of her immediate family and thus integrating, albeit to a limited degree, in Pakistan. It was open to the Judge to prefer this evidence in its entirety to the 'generic' (paragraph 35) evidence of the Respondent.

22. The Judge at paragraph 34 indicates that '*medical services are not available in Pakistan*': while this may not reflect fairly all of the contents of the letter of Dr Nizami of the Institute of Psychiatry in Rawalpindi the Judge was clear that what the Doctor said in that letter was accepted in its entirety and the Judge was not required to repeat it verbatim. What was said in the letter that was relevant to the issues to be determined was:

- (a) A1 *'enjoys to socialize and interact with other in her limited capacity and with the support of social workers and the specialized healthcare service in UK.'*
- (b) The Appellant had been referred (by the refusal letter) to the rehabilitation services in Aga Khan Hospital in Karachi which is 1500km from the Appellants home in Islamabad. The 'multiple locations' referred to in the refusal letter are in fact only sample and specimen collection centres not facilities that provide rehabilitation or medical care for cerebral palsy patients.
- (c) The Movement for Disabled is described as an 'obscure advocacy with unidentified capacity to cater for any needs of patients with cerebral palsy. It also states that lately its website has stopped working and it is not traceable
- (d) A1 requires specialized fluid thickeners and bath and shower emollients which are not readily available in Pakistan.
- (e) Its conclusion is that 'with no available facilities for social and rehabilitation services' required for the Appellants wellbeing a move would be detrimental to her 'physical, mental and social welfare.'

23. The Judge also accepted at paragraph 34 the evidence of Dr Aziz Sonawalla a Consultant Neurologist and Senior Lecturer at the Aga Khan Hospital. The Judge was entitled to give this letter weight given that this was the hospital the refusal letter suggested could provide services that were relevant to the issues to be determined. The Doctor identifies the provision of 4 separate services in the UK including social rehabilitation and education facilities which in particular would clearly be relevant to her ability to integrate and notes *'to the best of my knowledge these kinds of facilities are not available anywhere in Pakistan.'* The Doctor notes that some facilities may be available in the private sector but these are for children and not on any long term basis. He also states that he is unaware of any *'long term employment programs for such physically challenged persons'* noting that he checked this with colleagues who worked in Aga Khans rehabilitation department. He makes clear *'The Aga Khan University Hospital is a tertiary medical centre based in Karachi in the private sector. However it too does not have facilities to cater for long-term rehabilitation for chronic conditions.'*

24. The Judge also had in the bundle and appears to have accepted (paragraph 39) the evidence from the Appellants GP Dr Needham at AB 65-67 and no challenge to this evidence is recorded in the ROP. This too addresses the positive impact of attendance at the Seashell Trust which explored ways to help her '*effectively express herself and become more socially active*' and provided access to work skills using new IT based tools for social interaction and notes the positive impact they had on her. The Dr notes, consistent with what was said by Dr Sonawalla, '*these opportunities in treatment and the access to education are not available in Pakistan.*'

25. It was open to the Judge to note there that the Respondent relied on '*generic evidence*' (paragraph 35) and to prefer the far more specific evidence provided by the Appellant.

26. Taking all of this medical evidence into account and given that integration involves more than the provision of medical care either in a hospital or at home but envisages an assessment of the Appellants ability to enjoy a private life and interaction with society beyond the confines of her home and indeed communicate with those around her the Judge was entitled to conclude that there would be very significant obstacles to the Appellants reintegration in Pakistan.

27. I would finally note that it would also be open to the Judge to find that A2 and her husband were not estranged as claimed but this was of limited relevance as the medical evidence did not suggest that social and rehabilitative treatment was available for adult sufferers of cerebral palsy either in public or private hospitals.

28. I am therefore satisfied that the Judge's determination when read as a whole set out findings that were sustainable and adequate in explaining why it was accepted that there were very significant obstacles to reintegration in Pakistan.

CONCLUSION

29. I therefore found that no errors of law have been established and that the Judge's determination should stand.

DECISION

30. The appeal is dismissed.

Signed

Date 12.7.2019

Deputy Upper Tribunal Judge Birrell