Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/25249/2016
HU/25248/2016

THE IMMIGRATION ACTS

Heard at Birmingham
On 10th January 2019

Decision & Reasons Promulgated
On 12th February 2019

Before

DEPUTY JUDGE UPPER TRIBUNAL FARRELLY

Between

Mr. ZULIFIQUAR TALIB
Mrs NASIM AKHTER
(NO ANONYMITY DIRECTION MADE)

Appellants

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the appellants: Mr Z Jafferji, Counsel, instructed by SKR Legal Solicitors
For the respondent: Mr D Mills, Senior Presenting Officer

DECISION AND REASONS

Introduction

1. The appellants have been given permission to appeal the decision of First-tier Tribunal Judge N Lodge who dismissed their appeal against the

respondent's refusal to grant leave to remain on article 8 grounds. To put the arguments advanced in context I set out the appellants immigration history.

2. The 1st appellant was born on 10 July 1945 and is the husband of the 2nd appellant, born on 1 January 1946. Both are nationals of Pakistan. They were admitted to the United Kingdom on the basis they were coming as visitors on 15 March 2003. They have remained since with their son, Mr Mohammed Imran Sohail and his family.

3. Over the years they have made unsuccessful attempts to obtain permission to remain. Before their visit visa expired an in time application for indefinite leave to remain was made. The application was considered under paragraph 317.This concerned the requirements for indefinite leave to remain as the parent or other dependent relative of a person present and settled in the United Kingdom. At that stage they were under 65. To succeed they needed to show they were living in the most exceptional compassionate circumstances and there were no other close relatives in Pakistan who could provide financial support.

4. Their appeal was heard by Mr P V Chamber, Adjudicator on 15 October 2004.The appellants suggested they were in difficult circumstances and reliant upon their son in the United Kingdom. They had been living for a long time in Saudi Arabia where the 1st appellant was employed. They said they had a daughter living in Pakistan but suggested she could not support them and there were no other relatives there who could. They also raised health issues.

5. The judge heard evidence from the appellants. When the applications for the visit Visa were made it was stated that they were financially secure and independent. However, the claim subsequently made was that the substantial savings were necessary to discharge debts. The 1st appellant explained that in completing the application he wanted to give the impression he would not be a burden in the United Kingdom. He said he gave a totally false impression of his true financial position which he described as due to a `misunderstanding'.

6. The judge found they were not witnesses to the truth. The judge found they were not mainly financially dependent on their relatives here or that the most exceptional compassionate circumstances applied. The judge made the point that in applying to come as a visitor it was implied they would be able to return to their home country and sustain themselves. The judge did not accept the 1st appellant's claim of indebtedness and rejected his claim of a `misunderstanding' over his finances. The judge observed his position had shifted from being in the strong financial position when he made his visit Visa application to someone in poor financial circumstances. The judge did not accept his explanation of his changing fortunes. There was no medical evidence of disability.

7. The judge did not accept they had no relatives in Pakistan who could assist. Again, the judge pointed out that in applying for a visit Visa there should have been a contemplation of return to their home country.

8. Notwithstanding the dismissal of the appeal the appellant's remained in the country. In 11th June 2013 a further application for leave to remain was refused in July 2013.The decision was reconsidered in June 2015 but not changed. They then appealed in July 2015 and were successful insofar as the matter was to be reconsidered. The respondent then reconsidered it and the refusal maintained. That decision taken on the 1 November 2016 was the subject matter of the proceedings before First-tier Tribunal Judge N Lodge.

9. There was medical evidence that the 1st appellant suffered strokes in 2013 and in 2016.These were described as posing a mild to moderate impairment. The couple also had various ailments associated with the natural ageing process

The First tier Tribunal

10. Mr Jafferji appeared for the appellant as he does now. The 1st appellant gave evidence and confirmed he was in contact with his daughter in Pakistan. Again, he said it was not culturally acceptable for the appellant and his wife to live with her. He accepted he could maintain contact with his family here if returned to Pakistan. He also indicated he had a brother in Pakistan who lived in the former family home. The appellant said he had lived in Saudi Arabia from 1975 for 28 years before retiring.

11. The 2nd appellant also gave evidence and indicated she had a brother and sister in Pakistan. It transpired the couple had another son though they claimed not to know where he was.

12. She said that she and her husband stayed at her brother's home when they would return to Pakistan from Saudi Arabia and alternated this with visits to her daughter's home.

13. The judge also heard from the appellants son in the United Kingdom with whom they were living. He said he was employment, earning about £20,000 per year. Like his parents he claimed not to know where his brother was and suggested he might be in Dubai or Malaysia. He also had a sister living in the United Kingdom.

14. Initially, the consideration focused upon whether paragraph 276 ADE1(vi) was met. Regarding the medical evidence submitted the judge took the view that the 1st appellant was being conservatively treated and referred to him having some moderate impairment with regard to day-to-day activities and might require some supervision. The judge found that his wife could assist. It was not suggested the necessary medication was unavailable in Pakistan.

15. The judge acknowledged that the appellant had been outside of Pakistan since 1975. However, the judge pointed out that whilst living in Saudi Arabia they returned to Pakistan for holidays to visit family members and did not find they had lost contact with the general cultural norms. The judge referred to evidence that the appellants had stayed at what was the former family home in Pakistan and found no evidence to indicate they could not return there.

16. The judge referred to the earlier determination which had found they were not witnesses to the truth. First-tier Tribunal Judge Lodge did not accept they had no relatives in Pakistan who could assist and did not accept their claim did not know the whereabouts of their other son. The judge concluded he was in Pakistan and in a position to assist but they did not wish to reveal this. The judge also referred to them having a number of close relatives in Pakistan. The judge also rejected the claim that their son in the United Kingdom could not support them if they returned to Pakistan. The judge found it surprising the appellant would not have a pension from his former employment and pointed out the substantial capital sum he had when he arrived. Consequently, the judge did not find very significant obstacles to their integration into Pakistan.

17. The judge then considered the position outside the rules. There then followed consideration of paragraph 395C. By this, when making a decision to remove a migrant from the UK regard was to be had to a non-exhaustive list of factors such as age, strength of connections, compassionate grounds and so forth. As the grant of permission points out this was repealed on 13 February 2012.Consequently, if there was an error it was in this being considered at all. However, as it did not positively affect the outcome it has made no material difference.

18. First-tier Tribunal Judge Lodge carried out a proportionality assessment and accepts the appellant had established a private and possibly a family life whilst in the United Kingdom. The judge alludes, albeit without naming section 117 B, to the factors therein, including the fact the appellants do not speak English and would be a burden upon the State through health care and the benefit system. The judge commented that their immigration status has always been precarious. At paragraph 38 the judge said even if family life were established the decision was proportionate.

The Upper Tribunal.

19. Permission to appeal was granted on the basis it was arguable the judge did not provide adequate reasons for some factual findings. These included the finding that the appellants would be financially supported by family members or there were not dependent upon family members. It was also arguably an error of law not to have considered the decision of SSHD -v- Kamara [2016] EWCA Civ 813 and that the concept of integration calls for

broad evaluative judgement. Finally, it was arguable the judge did not refer to the best interests of children. In the application there was reference to the impact of the decision upon the appellants grandchildren in the United Kingdom.

20. At hearing, Mr Jafferji highlighted the 1st appellant's medical's condition and suggested the judge had not adequately reason why he was not dependent upon his son in the United Kingdom. He argued that the judge had not dealt with the evidence of their son who said that he would not be financially able to support his parents if they were returned. There was reference to the cost of living in Pakistan. He submitted the judge had not engaged with this.

21. He pointed out that the decision of Adjudicator Chamber was now 13 years old and that the appellants had not been to Pakistan since 1975. He submitted that the respondent had delayed in taking decisions in their cases and I was referred to correspondence in the appeal bundle. He referred to the decisions in EV Kosovo and that the former provisions of paragraph 395C fed into the delay.

22. Finally, he argued the judge failed to consider the impact of the decision upon their children as well as their grandchildren. There had been a letter from the children in support of the appeal.

23. The presenting officer contended that the judge had adequately considered whether the appellants could integrate into life in Pakistan, notwithstanding the absence of a reference to SSHD -v- Kamara [2016] EWCA Civ 813.He pointed out the judge had found they had family in Pakistan. There was no reason why their families here could not support them by remittances. The presenting officer said that the judge had not simply adopted the earlier decision but had looked at all the facts. This was against the background where the appellants had earlier not been found credible. He submitted the findings made were open to the judge.

Consideration

24. I have set out in detail the history of the appeal as it gives an insight into the issues and evidence dealt with by First-tier Tribunal Judge Lodge. The 1st observation is that the appellants came here on a visit visas. It was patently obvious to them they had no permanent right to remain. At an early stage they sought to assert such a right, resulting in the appeal before Mr Chamber, Adjudicator, on 15 October 2004.The judge was faced with arguments advanced similar to the present, albeit 14 years earlier. The circumstances at the time of that appeal remain relevant. Naturally with the passage of time has been some change, most notably the fact the 1st appellant has had 2 strokes.

25. The claim advance before Mr Chamber mirrored in many respects the claim advance before First-tier Tribunal Judge Lodge. In summary, the appellants

were claiming a state of dependence upon their son here and the absence of support for them in Pakistan. Their account before Mr Chamber was not accepted, with the judge concluding they were not witnesses to the truth. The judge rejected their claim that the comfortable finances suggested in the visit Visa was not the true situation. The judge also rejected their evidence about a lack of family support in Pakistan.

26. It has not been suggested in the present proceedings that First-tier Tribunal Judge Lodge should not have considered that earlier decision. The guidelines set out in Devaseelan [2002] UKIAT 00702; [2003] Imm AR 1 are always to be applied to the determination of a factual issue, the dispute as to which has already been the subject of judicial determination in an appeal against an earlier immigration decision involving the same parties.

27. It is clear from the decision that the judge was open to the consideration of fresh evidence. It must be remembered it is for the appellants to establish their claim. In making findings the judge is entitled to make reasonable inferences. The judge is not expected to give reasons for reasons given. It was known the 1st appellant had worked for many years in Saudi Arabia and had been able to accumulate savings. The earlier judge had rejected his claim that in fact this was money owed. The difficult for the first appellant in claiming penury was the fact his visit Visa application he was someone of substance.

28. The earlier decision indicated there were family members in Pakistan. It was common case that the appellant had a daughter living there. They have stayed with her in the past. It was open to the judge to reject the claim that she could not support them.

29. There was also evidence from the appellants of another son, although his whereabouts were said to be unknown. Again, it was open to the judge to reject this assertion. In this context the earlier finding that they lacked credibility remain relevant. This was essentially the claim in the 1st appeal.

30. The 1st appellant had indicated he has a brother living in the former family home. His wife had also referred to having a brother and sister. It was reasonable for the judge to see them as a potential sources of support. It was a matter for the judge to either accept or reject the appellant's claim they could not or would not assist.

31. Similar considerations apply in respect of support from the United Kingdom. It was stated the 1st appellant when he arrived gave his son substantial funds with which he purchased his home. Aside from natural love and affection is reasonable to assume that his son, through a feeling of indebtedness, would continue to support his parents if they were returned to Pakistan as he has done so whilst were here.

32. The judge had regard to the medical evidence. The judge concluded it did not suggest the appellant could not manage independently. This was a finding open to the judge. It was for the appellants to lay evidence to establish the contrary.

33. The judge considered in detail the ability of the appellants to integrate back into life in Pakistan. It is important to note that they had spent their adult lives in Pakistan. The facts in Kamara are considerably different. It concerned an appellant from Sierra Leone who came to the United Kingdom at the age of 6. The appellants had grown up in Pakistan. They had lived for several decades in Saudi Arabia but they continued to return to Pakistan for visits. They speak Urdu. I can find no material error in the judge's conclusion about their ability to integrate.

34. It was submitted the judge failed to consider the best interests of children. The appellant's son and daughter are adults. It was for the appellants to establish the existence of family life within the meaning of article 8. There has been extensive jurisprudence on this. There was no legal or factual presumption as to the existence or absence of family life for the purposes of Article 8 nor is there any requirement of exceptionality. It all depended on the facts. The love and affection between an adult and his parents or siblings would not of itself justify a finding of a family life .(see BRITCITS –v-SSHD [2017] EWCA Civ 368).As a general matter, the relationship between grandparent and grandchild, beneficial though it may be, is unlikely to carry material weight in terms of Article 8, unless the grandparent has stepped into the shoes of a parent (see Thakrar (Cart JR; article 8: value to community) [2018] UKUT 336.)

35. It was argued that there was delay and the appellant had lost out on the benefit of paragraph 395C. Irrespective of the fact that provision has been deleted there is still an obligation on the respondent to act fairly and to consider any exceptional or compassionate circumstances. This has occurred. Consequently, they have not been disadvantaged. Furthermore, it was not established that the delay illustrated a dysfunctional system. The appellant's have overstayed for a considerable period. There have been significant periods when they did not contact the respondent. When they did engage the subsequent passage of time was attributable to their contesting the decisions by way of judicial review and appeals. Whilst the passage of time would have led to a strengthening of ties the appellants were always aware of the precarious immigration situation.

36. The judge correctly referred to the public interest factors set out in section 117 B albeit there was no specific reference to the statute. It may well be that the appellant have some command of English the primary language is Urdu. There was no indication of integration into the local community presented. It was reasonable for the judge to conclude given their age and health conditions that they would be a burden upon the State.

37. In conclusion, I find that the judge correctly analysed the issues arising and made appropriate findings based upon evidence and inferences which could be drawn. Having considered the grounds and the arguments advanced I find no material error of law established. Consequently, the decision of First-tier Tribunal Judge Lodge dismissing the appeals shall stand.

Decision

No material error of law has been demonstrated. Consequently, the decision of First-tier Tribunal judge Lodge dismissing the appeal shall stand.

Francis J Farrelly
Deputy Upper Tribunal Judge. Date: 10 February 2019