



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-004933
On appeal from: HU/03489/2020

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 15 March 2023

Before

UPPER TRIBUNAL JUDGE GLEESON

Between

MUMTAZ AZHAR
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Heard at Field House on 14 March 2023

DECISION OF THE UPPER TRIBUNAL
PURSUANT TO RULE 40(3)(a) OF
THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008

Introduction

1. The appellant has been granted permission to challenge the decision of First-tier Tribunal Judge Williams, dismissing her appeal against the respondent's decision on 19 February 2020 to refuse leave to remain on private and family life grounds pursuant to Appendix FM of the Immigration Rules HC 395 (as amended) or Article 8 ECHR outside the Rules. She is a citizen of Pakistan, and is 83 years old.

2. The hearing of this appeal is listed for 23 March 2023. However, for the reasons set out in this decision, I have come to the conclusion that the appeal should be allowed on the papers and remitted to the First-tier Tribunal for remaking afresh.

Procedural matters

3. **Vulnerable appellant.** The appellant is a vulnerable person by reason of her age and her health issues. In particular, she has various medical problems, including a diagnosis of dementia (which is in issue).
4. She is entitled to be treated appropriately, in accordance with the Joint Presidential Guidance No 2 of 2010: Child, Vulnerable Adult and Sensitive Appellant Guidance.

Background

5. The main basis of the appellant's case is that by reason of her health problems, and her age, she should be allowed to remain in the UK to be cared for by her family. The First-tier Judge dismissed the appeal principally because he considered that the proposed interference was lawful and proportionate.
6. Permission to appeal to the Upper Tribunal was granted by UTJ Gill on the basis that, in concluding that there had never been a formal diagnosis of dementia, the First-tier Judge had arguably overlooked evidence given by the appellant's son, and misconstrued the interplay between the evidence of Dr Owen and Dr Azam.
7. On 13 March 2023, Mr Alain Tan for the respondent sent in the respondent's skeleton argument for the hearing. The respondent agrees that the First-tier Judge's decision contains a material error of law, in that he failed to consider all the relevant evidence in the round, as he is required to do. The respondent further noted that given the age of the appellant, and the period of almost 27 months since the First-tier Tribunal hearing, further findings of fact would be required before the decision in the appeal could be remade.
8. On the same date, the appellant's solicitors wrote to the Tribunal, seeking an adjournment and an extension of time to comply with directions and to obtain further evidence for the resumed hearing, specifically a country report for Pakistan and medical evidence dealing specifically with dementia and its effect on the appellant.
9. The appellant was paying privately for the appeal and it would have been disproportionate, they argued, for her to disburse the cost of preparing a skeleton argument or obtaining further medical evidence, until permission had been granted. The appellant's solicitors indicated that they would be making a rule 15(2A) application to adduce the new evidence.

10. The upshot of all this is that both parties agree that there is a material error of law in the First-tier Tribunal decision, that it should be set aside, and that further evidence is required.
11. I am satisfied that the decision of the First-tier Tribunal can properly be set aside without a reasoned decision notice.
12. Pursuant to rule 40(3) of the Tribunal Procedure (Upper Tribunal) Rules 2008, no reasons (or further reasons) will be provided unless, within 7 days of the sending out of this decision, either party indicates in writing that they do not consent to the appeal being disposed of in the manner set out at (5) above.
13. If in consequence an oral hearing is required, but the outcome is the same, the Upper Tribunal will consider making an order for wasted costs.

Decision

14. I set aside the decision of the First-tier Tribunal, with no findings of fact or credibility preserved. The decision in this appeal will be remade in the First-tier Tribunal on a date to be fixed.

Judith A J C Gleeson
Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 14 March 2023