IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-004766
UI-2022-004767
First-tier Tribunal No: HU/04205/2021
HU/04206/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 17 April 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

IA
AI
(ANONYMITY ORDER MADE)

Respondent

Representation:
For the Appellant: Ms Young, a Senior Home Office Presenting Officer.
For the Respondent: Mr R Ahmed instructed by Fawad Law Associates.

Heard at Phoenix House (Bradford) on 31 March 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the respondents are granted anonymity.

No-one shall publish or reveal any information, including the name or address of the respondents, likely to lead members of the public to identify them. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Secretary of State appeals with permission a decision of First-tier Tribunal Judge Rose ('the Judge'), promulgated on 19 July 2022, in which the Judge allowed their appeals against the refusal of their applications for leave to remain on human rights grounds; made on the basis they claim they will face very significant obstacles if returned to Pakistan, having lived in the UK

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unlawfully with their three children for at least 15 years, such that they should be granted leave pursuant to paragraph 276 ADE(1) of the Immigration Rules. The appellants, a husband and wife born on 6 July 1965 and 28 June 1970 respectively, also claim to suffer from age-related illnesses which could not be adequately cared for in Pakistan.

2. The appellants did not seek to argue that the first appellant's health is such that removal from the United Kingdom will breach his Article 3 ECHR rights.
3. The Judge's findings are set out from [15] of the decision under challenge. Within those paragraphs the Judge notes the first appellant has provided evidence showing he suffered a stroke, has Type 2 diabetes, muscular problems which include sciatica, chronic pain in his right leg, obesity, hypertension and asthma, and that the second appellant also has a number of medical conditions which include a diagnosis of fibromyalgia which causes widespread pain [17]. The Judge notes that neither appellant works and the first appellant stated he is dependent on charitable donations from members of the community with the appellant's daughter giving evidence of the financial support she provides for her parents, at [18].
4. At [19] the Judge accepts that if the family relocate to Pakistan the first appellant will not receive those donations and that it was highly unlikely he could not sustain such an income without being present amongst the people who make the donations or that they would be willing to make the effort to transfer such donations electronically. At [20] the Judge accepted the appellant's daughter's evidence that without the extensive childcare her parents provide she would not be able to maintain her current employment, and that any reduction would mean she is unlikely to be able to provide her parents with any financial support.
5. The Judge finds neither has any family in Pakistan from whom they are not estranged nor accommodation. Their medical conditions prevent them from working which will result in conditions described as bleak, including living in extreme poverty, whilst trying to manage their various health needs without the assistance of their daughter [21].
6. The Judge finds at [22] that the appellants case falls within the provision of the Rules namely that both would encounter very significant obstacles to their reintegration into Pakistan pursuant to paragraph 276ADE(1)(vi) of Appendix FM.
7. In relation to Article 8 ECHR, the Judge finds the appellants and their daughter and granddaughter form a close family unit within which they provide significant and essential emotional support to the daughter in the aftermath of an abusive relationship and resultant estrangement from her siblings, and that she provides them with financial and practical support. The Judge also finds the appellants will suffer the emotional impact of estrangement from their two sons as well as from the first appellant's wider family in Pakistan [23].
8. The Judge refers to the Razgar principles from [25], finding the appellants have a family life which engages Article 8 based upon the relationship with their daughter and granddaughter. The Judge notes the question in the appeal relates to proportionality [26], makes reference to section 117 of the 2002 Act, makes findings that were considered relevant, finds the decision would not be proportionate, and allows the appeal on that basis.
9. The Secretary of State sought permission to appeal asserting:

    Failure to give adequate reasoning

    1. The Appellants are both citizens of Pakistan, born on the 6th July 1965 and 28th June 1970, and are husband and wife. Both entered the UK lawfully – the First Appellant on the 14th July 2003 and the Second

Appellant on the 1st September 2006 – but both have overstayed, without leave to remain. In short, they have now been living unlawfully in the UK with their three children for at least 15 years. Their children are now adults and each has leave to remain in the UK. Both Appellants seek leave to remain on the grounds that they would experience very significant obstacles were they to return to Pakistan, after such a long time away, such that they should be granted leave pursuant to paragraph 276 ADE (1) of the Rules. In addition, both Appellants suffer from a number of age-related illnesses, which could not be adequately cared for in Pakistan.

2. The Tribunal found : " I have concluded that the particularly strong and close relationships that exist between the Appellants, their daughter and their granddaughter combined with the length of time that each Appellant has spent in the UK means that, notwithstanding the provisions of s117B, it would be disproportionate to remove them at this point in their lives. I would therefore allow these appeals on the basis that either Appellants' removal would amount to a breach of their Article 8 ECHR rights(28)".
3. The respondent notes that there has been no evidence adduced to suggest that financial support from within the community would not continue if the A's were to be returned. The determination speculates on that point. There is no reason why this could not continue on return to Pakistan.
4. Further, the respondent notes that whilst the A have been here illegally for 15 years they have sought use of the NHS and other services to which they were not entitled. In addition whilst accepting that the A have been supported by their daughter (26) Clearly that is not the case.
5. The A's can return and use financial support from the UK to access healthcare on return.
6. The A's do not speak English and they would be returning to their home country where they have spent the majority of their lives and the respondent submits there are no significant obstacle to face on return. There are no more than normal ties in this case, the relationship with their grandchildren has developed whilst the A's remained here illegally.
7. On the facts of this case the respondent seeks PTA.

10. Permission to appeal was granted by Upper Tribunal Judge MacLeman on 21 November 2022 on the basis is said to be arguable whether the tribunal gave adequate reasons for holding that support could not or would not be provided to the appellants in Pakistan; that there were very significant obstacles to their reintegration; or that the respondent's decision breached their rights to respect for private and family life, having regard to section 117B of the 2002 Act.

Discussion

11. Ms Young on behalf of the Secretary of State expanded the grounds of appeal submitting it was not clear from the evidence how the judge came to the conclusion that the appellants had no contact with their family in Pakistan, that the Judge did not properly assess the actual situation, had failed to undertake a proper proportionality assessment in not stating why the degree of emotional support was above the normal relationship one would anticipate between parents and their adult children, and submitted the facts had not been balanced

as part of the assessment. Particular reference was made to the fact the appellants have used the NHS when they had no leave to remain or permission to do so at cost the public purse, relevant to the section 117 assessment, and whilst accepting the weight to be given to the evidence was a matter for the Judge, there was a need to provide a full and proper detailed recent assessment.

12. The Judge considered the merits of the appeal initially by reference to paragraph 276 ADE(1) of the Immigration Rules. This paragraph, now replaced by Appendix Private Life, was worded so the requirements for leave to remain had to be met at the date of the application. This means that even if the appellants had in excess of 19 years as submitted by Mr Ahmed at the date of the appeal hearing it would not have assisted them under paragraph 276 ADE.
13. Mr Ahmed did not dispute that the Judge had erred in law but argued that any errors that had been made were not material to the decision to allow the appeal.
14. In relation to long residence requirement, Appendix Private Life is worded so that only the age of the applicant is assessed at the date of application not a substantive requirement. The Judge noted the first appellant entered the United Kingdom on 14 July 2003 and so even if this appeal was dismissed in April and he was not moved and made a further application of the 15 July 2023 he would have the necessary minimum 20 year period. There is, however, no near miss argument available to the appellants in this appeal as the Rules clearly set out Parliament's intention as to the minimum period an individual has to be in the United Kingdom for to succeed if they are not here lawfully. Length of residence and ties formed during such a period is, however, relevant to the Article 8 assessment.
15. The evidence before the Judge showed the source of the contributions received by the appellants. The Judge was clearly aware of the need to establish this as it is written at [10]:

> 10. In answer to a question posed by myself, he stated that, currently, he relies upon the charity of members of his local Muslim community, particularly at his local Mosque. Indeed, he often receives personal donations at Friday prayers. He is also supported by his daughter. He stated that, such is the personal nature of the donations he receives, he could not expect to continue to receive such support if he went back to Pakistan.

16. The Judge therefore considered not only the source of the funding but also the circumstances in which it was given by members of the community attending the Mosque, often at Friday prayer. It may be that questions were not asked in the preparation of the case as to whether those within the Mosque would be prepared to continue providing such donations or whether through a Mosque in the appellant's home area arrangements could not be made for donations to be made locally. Even if that is the case the Judge clearly accepted the evidence in relation to the personal nature of the donations and the level of available income was credible.
17. In relation to the situation of the appellant's daughter, the Judge again carefully considered this aspect in some detail setting out the factual analysis of the daughter's circumstances and reasons for estrangement from her siblings at [13].
18. The Judge considered the appellants medical conditions and makes a clear finding based upon the evidence as a whole that neither currently work nor have the capacity to work. That is a finding that is reasoned on the basis of the evidence the Judge was asked to consider.

19. This is one of many appeals in which the Secretary of State was unable to provide a Presenting Officer meaning the Judge did not have the benefit of any input from the Secretary of State. The Judge was however entitled on the facts to proceed in the absence of the respondent's representative.
20. It is correct that the Judge, despite having noted the medical conditions suffered by the appellants, does not factor the costs of the same into the section 117 assessment. The Judge does not say, however, that there would be no cost to the public purse, only that the appellants are "*ably assisted by their daughter and neither imposes any significant burden upon the 'taxpayer'*". Whilst that may not be so in relation to the day-to-day needs of the appellants who are accommodated by their daughter who provides for them in addition to the donations from the Mosque, it might be questionable in relation to the cost to the NHS of meeting their respective medical needs.
21. The Judge finds pursuant to paragraph 276 ADE that the appellants would encounter very significant obstacles to their reintegration into Pakistan [22]. Mr Ahmed submitted that even if different Judge would not make this decision that did not mean that the decision made by the Judge is infected by material legal error.
22. The Judge's reasons for coming to the conclusions are adequately set out as a reader of the determination is clearly able to understand what findings the Judge has made and the reasons why the Judge came to such conclusions. The one ground of appeal is a failure to give adequate reasons, but a failure to apply the relevant test is not made out on the evidence.
23. As it was found the appellants can satisfy the Immigration Rules, which contain Parliaments view on how Article 8 ECHR should be interpreted, that gave substantial weight to the appellants side of the proportionality balancing exercise.
24. The Judge went on to consider section 117 of the 2002 Act as required as there is no appeal against the decision under the Rules. Having considered the evidence, and having given reasons, the Judge found the decision proportionate. The Judge took into account the length of residence, domestic circumstances, health, lack of employment prospects or housing in Pakistan, together with the situation in the UK, before deciding the decision is not proportionate.
25. The Court of Appeal has made it abundantly clear that appellate judges, including the Court itself, should not interfere with a decision of a judge below unless a clear material legal error has been established. In this appeal, although not all judges may make this decision as recognised by Mr Ahmed, it has not been established the decision falls outside the range of those reasonably open to the Judge on the evidence. It is neither perverse, rational, or infected by legal error that can be said to be material to the decision to allow the appeal.

Notice of Decision

26. There is no material error in the decision of the First-tier Tribunal. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

3 April 2023