



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000382
First-tier Tribunal No:
HU/00582/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 25 June 2023

Before

UPPER TRIBUNAL JUDGE KAMARA

Between

CHOUDHRY ABDUL RAZZAQ
(NO ANONYMITY ORDER MADE)

Appellant

and

The Entry Clearance Officer

Respondent

Considered on the papers on 20 June 2023

DECISION AND REASONS

Introduction

1. The appellant is an elderly widower with a diagnosis of dementia. His application for leave to enter the United Kingdom as an adult dependent relative was refused by way of the respondent's decision dated 1 March 2022.
2. No anonymity direction was sought previously, and no application has been made for anonymity now.
3. The appellant has been granted permission to appeal the decision of First-tier Tribunal Judge Barker promulgated on 21 December 2022 who found that the respondent's decision was a proportionate response to the application for entry clearance. The judge also found that Article 3 ECHR was not engaged.
4. Permission to appeal was granted by First-tier Tribunal Judge Hatton on 8 February 2023 on the following basis.

Multiple reasons are advanced as to why the Judge erred in concluding the Appellant's care needs could be adequately met in Pakistan. In particular, I am mindful the Judge's finding at [24] that the Appellant does not require the level of care claimed by his sponsor and other children in the UK arguably overlooks the fact that the claimed level of care required is predicated upon uncontested medical evidence. Correspondingly, I accept the Judge's approach to said uncontested medical evidence is arguably flawed, as meticulously articulated in the grounds, most notably, because the Judge appears to have overlooked the undisputed fact that the Appellant's condition, expressly including Alzheimer's Disease, vascular dementia and a depressive disorder of moderate severity is progressively deteriorative with a poor prognosis, and decline is inevitable. I also accept the Judge arguably erred in concluding the Appellant's cognitive impairment had discernibly improved, given the two respective doctors employed two different types of assessment. I further accept it is arguable the Judge erred in failing to have sufficient regard to medical evidence's conclusions pertaining to the strong causal link between family support and the effect on the Appellant's health and wellbeing, without which his physical and mental health is likely to deteriorate. By the same token, I accept it is arguably unclear that rotating visits from the Appellant's UK-based family are sufficient to adequately address his documented health needs in Pakistan, contrary to the Judge's finding thereon at [23]. I additionally accept it is arguable the Judge erred in placing heavy reliance upon the Respondent's Country Policy and Information Note ("CPIN") given that the CPIN in question does not address the availability of specialist care in Pakistan for those with dementia and/or Alzheimer's.

5. The respondent filed a Rule 24 response on 7 March 2023 in which the appeal was not opposed, and the following comments were made.

The respondent does not oppose the appellant's application for permission to appeal and accepts that the First-tier Tribunal Judge materially erred for the reasons set out in the grounds predominantly in misunderstanding the medical evidence and that of the witnesses.

This in turn vitiates the consideration as to what care is required and the conclusions drawn in relation to appropriate care in Pakistan. On the latter point, the SSHD notes that the evidence relied upon by the appellant does not appear to conform with the requirements of Appendix FM-SE 35- evidence from a local/central authority or medical professional. However, it is accepted that such opinion/evidence and material findings are dependent on an assessment of the applicants medical circumstances.

The SSHD agrees with the proposal that it would be appropriate to set aside the decision and remit the matter *denovo* to the First-tier Tribunal.

6. On 2 June 2023, the Upper Tribunal sent an email to the sponsor to propose that this matter be remitted to the First-tier Tribunal without need for a hearing. The sponsor replied on 5 June 2023, stating as follows.

Thank you for your email dated 2nd June 2023. We have no objections to this case being remitted to the First-tier Tribunal for a *de novo* hearing without the need for a hearing before the Upper Tribunal.

The only request we would make is for an expedited hearing at the FTT since this matter has been with the Tribunal service for over 15 months since our original appeal, and whilst we appreciate that a process needs to be followed, there is a humanitarian impact that the Appellant and his family are bearing the consequences of.

7. In view of rightfully made agreement of the parties that the First-tier Tribunal decision contained material errors of law as well as their agreement to the proposed course of action, this appeal is remitted to the First-tier Tribunal for a de novo hearing.
8. **The Upper Tribunal notes the request for expedition made on the appellant's behalf. This is a matter for the First-tier Tribunal who will, no doubt, take account of the appellant's age and health in listing this matter.**

Decision

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

The decision of the First-tier Tribunal is set aside.

The appeal is remitted, de novo, to the First-tier Tribunal to be reheard by any judge except First-tier Tribunal Judge Barker.

T Kamara

Judge of the Upper Tribunal
Immigration and Asylum Chamber

20 June 2023