



**In the Upper Tribunal  
(Immigration and Asylum Chamber)**

**Appeal Number: UI-2024-001132  
FTT No: HU/55573/2023  
LH/05919/2023**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 26<sup>th</sup> of April 2024**

**Decision & Reasons Issued:  
On 10<sup>th</sup> June 2024**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE HANBURY**

**Between**

**MRS. SHABIHA FATIMA  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms H Smith of counsel  
For the Respondent: Mr N Wain, a Home Office Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. The appellant seeks to appeal the decision of FTT Judge Traynor (the judge) who, on sixth of December 2023, dismissed the appellant's appeal on Human Rights grounds against the Secretary of State for the Home Department's (SSHD's) decision to refuse that application on the 12<sup>th</sup> April 2023.
2. The judge found that the appellant had established a private life in the UK but that it was insufficient to entitle the appellant to leave to remain in the UK - there being no insurmountable obstacles to the appellant's safe return to Pakistan. The judge dismissed the appellant's appeal on grounds of family life also, finding that family life had not been applied for. If it had been, no family life sufficient to engage article 8 would have been established. In addition, the judge would have found that the appellant was not entitled to remain in the UK on grounds of article 8 in any event. She would receive medical treatment, insofar as she needed it, and other support in Pakistan.
3. The appellant sought permission to appeal against the FTT's decision on 26 January 2024. The three grounds essentially assert that there was a failure to properly undertake the Article 8 balancing exercise required (Ground 3) and to make sustainable findings as to whether the appellant has established a family life in the UK (Grounds 1 and 2).
4. Permission to appeal to the Upper Tribunal was granted by First-tier Tribunal Judge Swaney on 15 March 2024 in respect of all 3 grounds. On 30 March 2024 the SSHD confirmed he would not submit a response under Rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008 in respect of the appeal (see [CB/20]).

## **Background**

5. The appellant was born in Pakistan on 1 January 1951. On 15 May 2015 she came to the UK as a visitor. She claims to have had 2 British national sons but lives with Amir, who lives in the UK. She also had one son left in Pakistan. On 23<sup>rd</sup> February 2023 the appellant made her application for leave to remain (LTR). On 12 April 2023 the Respondent decided to refuse the HR claim under Appendix Private Life of the Immigration Rules (this appendix is difficult to find on the government's own website, but the guidance is available at <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-private-life>). The application was also refused on the grounds that there were no very significant obstacles to the appellant's safe return to Pakistan.

## **The hearing**

6. At the hearing, Ms Smith submitted that the decision said little about the degree of the appellant's integration into UK society but by and large Ms Smith relied fully on her skeleton argument which was comprehensive.
7. The respondent said the decision overall was sound and if there had been errors, they were in paragraph 29 to 30. Mr Wain accepted that family life was engaged at the date when it fell to be assessed and that the judge erred in so far as he had not considered it. But he did not accept it was a material error given the wide-ranging nature of the judge's conclusions. The claim to family life or leave to remain would insurmountable obstacles have been dismissed in any event, given the appellant had not been in the UK for very long, had not established as a family life of significance and, in any event, there were no insurmountable obstacles to that family life continuing abroad. The judge carried out a careful balancing exercise looking at the situation in Pakistan. In so far as the judge had failed to take into account the appellant's dependency on her adult son, insufficient weight should be given to that family life and the outcome of the balancing exercise was inevitably to refuse the human rights claim here. The appellant had a number of family members in Pakistan as well as the UK and her parents were still in Pakistan. There would have been little basis, therefore, for concluding that the respondent had unlawfully interfered with her protected human rights.
8. The appellant said there was a failure to assess family life or carry out any proper balancing exercise.
9. Mr Wain responded by pointing out that the same assessment was carried out outside the rules as under those rules. This allowed the respondent to take into account any exceptional circumstances. The judge was clearly conscious of any unjustifiably harsh consequences of return of the appellant in this case. Gen 2 of the Immigration Rules and in particular GEN 3.2 , which is at page 1435 of Phelan and online is found at <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-fm-family-members>, which specifically enjoins the decision maker to take account of any unjustifiably harsh consequences to the applicant, their partner or another family member, encompassed the situation here. Paragraph 22 of the decision was referred to, as this clearly indicated that the judge did take account of the appellant's family life in the UK. It was averred that this amounted to a consideration of the appellant's family life in the UK. Mr Wain submitted that the refusal was justified as there were no unjustifiably harsh consequences to family life continuing abroad. By

picking out the distinction between private and family life the appellant had failed to identify the key issue, which was the limited nature of any obstacles to the appellant's return to Pakistan. The only material error was at paragraph 29, where it appeared that the judge had considered article 8 and the right to a private life in isolation without also considering any family life. It may have been perceived that this was inadequate, but it needed to be weighed in the balance that the judge would be bound to come to the same conclusion as he in fact came to here. Any judge would be bound to come to the same conclusion for the reasons indicated. The article 8(2) balancing exercise could be carried out by a different judge of the first-tier Tribunal but would be more properly carried out by the Upper Tribunal with preserved findings if it were concluded that the that the errors were material.

10. The appellant said she did not accept that the errors could be isolated in this way. The judge had clearly relied on a number of immaterial points. The errors were sufficient to cast the whole decision into doubt. What was left of the decision, Ms Smith asked. The errors were sufficient to set the decision aside. I was referred to the case of **Agyarko [2017] UKSC 11**. The need to measure everything against the correct statutory criteria was mentioned. The judge had the wrong starting point in rejecting the appellant's family life here. If you remove the erroneous part, there was still a material error, it was submitted. The appellant had rightly raised the fact that she had lived here for several years. The judge found that the son in Pakistan would not provide the appellant with support if she returned there. The analysis of her health condition and needs at paragraph 26 of the decision were also criticised. There was a finding that meant the decision was unsustainable that he did he could. The evidence did not support such a conclusion. There were at least three unsustainable findings which need to be addressed by the UT. The appellant had strong family support network in the UK but not in Pakistan. The fact that the case the decision was fact sensitive and family life needed to be addressed afresh after a *de novo* hearing in the FTT. I was referred to the leading case of **EDM Lebanon [2008] UKHL 64**, paragraph 36, where the public interest in the balancing exercise was carefully applied. This was referred to at paragraph 24, on page 9 in the skeleton argument prepared by Ms Smith.
11. At the end of the hearing I reserved my decision as to whether or not there was a material error of law and, if so, what steps should be taken to address such error.

## **Discussion**

12. According to the respondent (see pdf 312) no application was made by the appellant on the basis that she had established a family life in the UK, but this was considered by the respondent, raised at the hearing and considered by the judge (see paragraph 14 of the decision at pdf page 7). In particular, the respondent records:

“You have not told us about a partner, parent or dependent children in the United Kingdom, therefore I have not considered the family life Rules under Appendix FM.”

But later the respondent deal with the family relationship whit the appellant’s son and his family living in the UK.

13. The judge dealt with the appellant’s family life as follows:

- 1) He noted at paragraph 19 that despite having a number of opportunities to claim an unlawful interference with her family life in the UK she had opted to treat the interference as one with the appellant’s private life (see paragraph 19);
- 2) He noted (paragraph 20) that the appellant had now been told by her son and daughter-in-law that they were “unwilling for her to return and continue to live with them” in Pakistan, thus it was imperative that she should “tap-in” to the resource of a number of family members in the UK who could continue to provide for her with daily support;
- 3) The details of the family life established are set out at paragraph 20 *et seq.* The respondent considered that the appellant had been receiving adequate written health care when she had lived in Pakistan;
- 4) The judge considered that the appellant’s relationship with family members in the UK did not mean he had established a family life with her family in this country but that conclusion does not appear to have prevented him considering this important issue;
- 5) The judge considered the appellant’s family life in the UK at numerous points in his decision, despite observing that the grounds of appeal before him and the way the appellant had put her case in writing did not explicitly raise family life as an issue. Thus, at the end of paragraph 21, the judge explicitly stated that: “I do take account take into account the observations made by Mr Tramboo in his submissions and acknowledge that I’m obliged

to consider the appellant article 8 rights in totality and it is for this reason I have made my findings in this regard”;

- 6) Furthermore, the judge went on to consider Appendix FM (family members) and paragraph GEN 3.2 and 3.3 and in particular. Those paragraphs are concerned with with general considerations relating to family life and required the appellant to show unjustifiably harsh consequences of the removal of the appellant on other family members;
- 7) The judge (at paragraph 27) also considered the scope for visits to take place and did not find a credible explanation on the evidence as to why the family members who had supported the appellant in the past could not make arrangements for visiting her in Pakistan. The same family members who would be able to continue to support her generously if she returned to Pakistan.

## **Conclusions**

14. It therefore seems, in the light of the above, that in substance the judge did consider the appellant’s family life but that he concluded that the consequences of the appellant’s removal would not constitute a disproportionate interference with her human rights, having carried out the balancing exercise the judge was required to carry out, as described at paragraph 29 *et seq.* It is said that the judge erred in a number of respects according to the grounds of appeal. It seems that, despite some errors of reasoning, the judge fully considered the appellant’s protected family life, came to clear conclusions and made comprehensive findings. In particular, the judge considered whether the appellant had established a family life in the UK, the nature of family and private life enjoyed and the extent to which it could be continued if the appellant were to return to Pakistan. These conclusions were made under the ECHR and the Immigration Rules.
15. The judge is also criticised for making an assessment of the appellant’s financial self-sufficiency and her “undoubted” propensity to access public funds. This aspect of the judge’s decision is criticised as the appellant had paid the health surcharge and there has been some external financial support to her. However, Section 117B of the Nationality, Immigration and Asylum Act 2002 provides that the enforcement of effective immigration controls is in the public interest and it is appropriate to consider the extent to which an applicant for leave to remain is likely to constitute a burden on the taxpayer. The judge cannot be criticised for the manner in which he considered this topic.

16. The finding by the judge at paragraph 22 of his decision contradicts other parts of the decision in that she appears to assert a lack of family life but in reality the judge is simply drawing attention to the limitations of the way that the appellant had pleaded her case. The judge had comprehensively dealt with that issue and in the same paragraph accepts her dependency on other family members. Insofar as there is an error of reasoning it is not material to the outcome of the case given the judge's comprehensive finding that there were no unsurmountable obstacles in the way of the appellant's return to Pakistan. Having said, in the same paragraph that she was not to determine article 8 family rights, she in fact did so.

17. I have concluded in all the circumstances that the decision of the FTT was within its discretion and there was no material error of law.

**Notice of Decision**

The appeal against the FTT's decision is dismissed.

No anonymity direction is made.

Signed



Date 30 May 2024

Deputy Upper Tribunal Judge Hanbury