IAC-AH-LEM-V1

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: IA/01046/2015
IA/01047/2015

THE IMMIGRATION ACTS

Heard at Manchester Crown Court	**Decision & Reasons Promulgated**
On 12 August 2015	**On 9 December 2015**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

RAZIA BEGUM (FIRST APPELLANT)
ABDUL MAJEED (SECOND APPELLANT)
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Ms Patel, instructed by Amjad Malik, Solicitors
For the Respondent: Mr Harrison, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants, Razia Begum [aged 63] and Abdul Majeed [aged 69] are citizens of Pakistan. They entered the United Kingdom on 5 June 2014 on visit visas. On 22 September 2014, they applied for further leave to remain on the basis of private and family life. The applications were refused by the respondent on 12 December 2014 and the appellants appealed to the First-tier Tribunal (Judge De Haney) which, in a

decision promulgated on 15 April 2015, dismissed the appeals. The appellants now appeal, with permission, to the Upper Tribunal.

2. The appellants could not succeed under Appendix FM of HC 395 (as amended) because they had entered the United Kingdom as visitors. The respondent also found that the appellants did not fall within the provisions of paragraph 276ADE and that there were no exceptional circumstances although it was noted that the second appellant had suffered a stroke in 2012. He had received treatment in Pakistan following that stroke and there was no reason to believe he would not continue to receive treatment in Pakistan. Ms Patel (who appeared before both the First-tier Tribunal and the Upper Tribunal) acknowledged (as is recorded by the judge at [12]) that the appellants could not succeed under the Immigration Rules. Their appeals had proceeded before the First-tier Tribunal on Article 8 ECHR grounds only.

3. Judge De Haney concluded that the appeals should be dismissed on human rights grounds. He also noted [15] that, had the appellants applied for entry clearance from abroad, they would have been unsuccessful because the property in which they are currently living in the United Kingdom (two bedrooms) is inadequate, housing both the appellants, their son, his wife and four children. The son is earning less than £10,000 per year in order to maintain these dependants. The judge also found that the witnesses who gave evidence before me had been "equivocal" as to when a decision had been made by the family that the appellants should apply to stay in the United Kingdom and not return to Pakistan. The judge observed [18] that the son and daughter-in-law of the appellants "would go to any lengths possible in order to be able to support the appellants [but] the fact remains there [had been] a clear attempt to circumvent the Immigration Rules" by applying to enter as visitors and shortly thereafter seeking to remain permanently in the country.

4. The lengthy grounds of appeal generally constitute a disagreement with those findings of the judge which were plainly available to him on the evidence. The judge had noted [19] that the appellants "are going to need considerable support and treatment which will be provided through the NHS if they are allowed to remain in the UK." The grounds [21] complain that "as visitors [the appellants] have not been eligible for free treatment and have thus far paid or have been liable to pay for any treatment they have received on the NHS and will continue to be liable to pay under the current regime." That statement is disingenuous. If the appellants are granted leave to remain in the United Kingdom then it was right for the judge to observe that the cost of their treatment will then fall on the public purse (i.e. the NHS) even though, as overstaying visitors, they have hitherto been liable to make payments to the NHS for their treatment. Indeed, in the last sentence of his decision, Judge De Haney has focused upon the very factor in this case which gives such considerable weight to the public interest concerned with the removal of these appellants. The judge found that these appellants entered the United Kingdom having, in effect, misled the Entry Clearance Officer who granted them visit visas because they entered with the intention of remaining here and not returning to Pakistan. It was not speculation on the judge's part that they did so in order to be in the company of

their relatives but also, importantly, in order in the longer term to obtain free treatment under the NHS. The public interest concerned with the enforcement of the immigration system so as to prevent such an abuse and drain on public resources is particularly strong. The circumstances of these appellants, by contrast, are not exceptional in any way. They have some medical conditions characteristic of the stage of life which they have now reached and which will no doubt become worse as they grow older. The stroke which the second appellant suffered in Pakistan was treated there and there was no evidence before the Tribunal to indicate that the appellants could not access appropriate treatment now in Pakistan.

5. With those observations in mind, the question remains whether the judge has erred in law. I find that he did not do so. He examined quite properly the specific evidence in this case and he reached a decision which was plainly available to him. The Upper Tribunal should only interfere with such decisions where they are plainly perverse or otherwise wrong in law or where a decision is not supported by adequate reasoning. That is not the case in this appeal. The appeals to the Upper Tribunal are, therefore, dismissed.

Notice of Decision

These appeals are dismissed.

No anonymity direction is made.

Signed Date 10 November 2015

Upper Tribunal Judge Clive Lane

I have dismissed the appeal and therefore there can be no fee award.

Signed Date 10 November 2015

Upper Tribunal Judge Clive Lane