



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

Appeal Number: IA/19284/2014

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 20<sup>th</sup> April 2015**

**Decision & Reasons  
Promulgated  
On 5<sup>th</sup> May 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE R C CAMPBELL**

**Between**

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

Appellant

**and**

**MR ABDUL HAFEEZ NIAZI NIAZI  
(ANONYMITY DIRECTION NOT MADE)**

Respondent

**Representation:**

For the Appellant: Mr E Tufan (Senior Home Office Presenting Officer)

For the Respondent: Mr D Kumudusena (Solicitor)

**DECISION AND REASONS**

1. Although the Secretary of State is the appellant and Mr Niazi the respondent, it is convenient to refer to the parties as they were before the First-tier Tribunal. The appellant's appeal against decisions to refuse to vary his leave and to remove him from the United Kingdom was allowed by First-tier Tribunal Judge R Chowdhury ("the judge") in a decision promulgated on 29<sup>th</sup> December 2014.
2. The appellant is a national of Pakistan. He and his wife entered the United Kingdom as visitors on 4<sup>th</sup> May 2012. On 26<sup>th</sup> September that year, he applied for leave to remain outside the rules. He was given limited leave in response, valid until 15<sup>th</sup> January 2014, to enable him to remain while his wife received medical treatment. Sadly, she passed away. The day

before his limited leave expired, the appellant applied for indefinite leave to remain, outside the rules. That application was refused on 9<sup>th</sup> April 2014 and the two immigration decisions giving rise to the appeal were made.

3. The judge heard evidence from the appellant's son. The appellant himself was unwell and did not attend. It was agreed that the requirements of the rules could not be met. The judge found that there were good grounds for considering whether leave should be granted outside the rules, finding that the appellant had suffered the loss of his wife and that all of his children reside in the United Kingdom. His medical expenses were met by means of private insurance. The judge found that the appellant had established a family life in the United Kingdom, that Article 8 was engaged and that she was required to have regard to section 117B of the 2002 Act. She concluded that it would be unjustifiably harsh for the appellant to return to Pakistan alone. She found that the adverse decisions amounted to a disproportionate interference with his Article 8 rights.
4. The Secretary of State applied for permission to appeal. It was contended that the judge erred in law in failing to explain why the appellant's circumstances were compelling or exceptional and why the public interest was outweighed. The appellant had precarious immigration status and there was nothing about his private life or family life that could not be continued in Pakistan. The appellant had been present in the United Kingdom for a short period of time and had spent most of his life in the country of his nationality. Permission to appeal was granted on 13<sup>th</sup> February 2015, on the basis that it was not clear how the judge found compelling circumstances other than by reference to the appellant's distress in the aftermath of his wife's demise.

### **Submissions on Error of Law**

5. Mr Tufan said that reliance was placed on the grounds. It was conceded that the appellant could not meet the requirements of the rules and the judge erred in the proportionality exercise. Any private life ties established by the appellant had little weight in the light of his precarious immigration status.
6. Mr Kumudusena said that the judge had been entitled to make an Article 8 assessment outside the rules and she correctly identified the compassionate circumstances in the case. The appellant's wife had passed away while she was present in the United Kingdom and she was buried in this country. The appellant's son gave evidence and adopted the witness statement which was before the judge. The appellant's family members were here and all the members of his wife's family remained in Pakistan. There was no contact with the appellant's in-laws, at least not to the extent that he could depend upon them in Pakistan. In any event, they had their own families to look after. The judge made an assessment of the circumstances and took into account medical evidence. This showed that the appellant was undergoing treatment for chest problems. His wife had passed away but before the sad event, the Secretary of State

had not accepted that there were any compassionate circumstances in her case. Now, however, the focus was on the appellant himself. He had heart problems. The judge made a finding that his medical expenses were being met by means of private insurance. The judge was entitled to allow the appeal.

7. The judge properly took into account section 117A to D of the 2002 Act. The appellant had complied with the rules in the past. She was entitled to conclude that the circumstances were compassionate and compelling. The appellant was in his 70s and all his immediate family members, including his grandchildren, were here in this country. He was being looked after by his daughter-in-law. She was a doctor, not practising here but qualified in Pakistan and she provided care for the appellant. This too was a relevant factor and there was supporting documentary evidence before the judge. The proportionality assessment was properly considered. The appellant's presence would not undermine the public interest.
8. Mr Tufan said that the evidence, including the letter at page 6 in the appellant's bundle "A" showed that there was nothing exceptional about his medical circumstances.

### **Conclusion on Error of Law**

9. I conclude that a material error of law has been shown. The decision has been prepared with considerable care by an experienced judge. She was, I find, entitled to conclude that the immigration rules do not fully cater for the appellant's circumstances. There is no provision for leave to be granted to a claimant with the combination of family and medical circumstances in the present appeal. However, what is not clear, with great respect to the judge, is the reasoning lying behind the overall conclusion that the public interest was outweighed.
10. The factors identified by the judge as critical appear at paragraphs 19 to 22, 24 and 25 and 27 of the decision. She made her assessment in the light of evidence given by a witness she found credible. The appellant's medical expenses are being met by means of private health insurance and his children and grandchildren live here. He has relatives in Pakistan, consisting of sisters-in-law and brothers-in-law but they have their own families to look after. The appellant is in his 70s. There are several factors capable of weighing in his favour. On the other hand, the appellant has been present in the United Kingdom for only a short period of time, although he has visited in the past, and he was given limited leave in the light of his wife's circumstances. The appellant suffered the very severe blow of his wife's demise and there is no reason to doubt that this sad event would have caused great distress to the entire family. The appellant himself, however, can have had no expectation that he would be allowed to remain here indefinitely, without meeting the requirements of the rules, although he was of course perfectly entitled to seek leave outside them.

11. The salient feature is the appellant's wife's demise. The judge properly took into account the isolation he would suffer in consequence and the obvious importance of the close ties to his children and grandchildren here. Nonetheless, it is not clear how she concluded that these important features of the case outweighed the public interest. The prospect of the appellant's return to Pakistan and his likely reliance there on privately paid carers, noted by the judge at paragraph 27, are not at all unusual or remarkable factors in the light of the sad circumstances the appellant finds himself in. As the Secretary of State noted in her decision letter, the ties between the appellant and his family members here might, notwithstanding his wife's demise and his ill health and reliance upon others in the future, be maintained as they have over the years. What is missing from the operative part of the decision is reasoning which shows how the judge concluded that the public interest was outweighed, in a case where the requirements of the rules were not met and where the appellant has had only limited leave in the past, taking into account fully the sad demise of his wife and the medical aspects.
12. I conclude that the decision of the First-tier Tribunal must be set aside and remade. In a discussion with the representatives regarding the appropriate venue, Mr Kumudusena said that further fact-finding would be required and that the First-tier Tribunal was the better forum. The appellant was not present and so the decision could not be remade in the Upper Tribunal immediately. He was currently in hospital (and a letter from St Bartholomew's NHS Trust was provided in support) and heart surgery might be required. Indeed, it was possible that an application to the Secretary of State might be made under the rules, in the light of his current ill health. Mr Tufan said that sufficient evidence was before the Upper Tribunal to enable the decision to be remade but, on the other hand, the appellant was not present.
13. In the circumstances, and taking into account paragraph 7.2 of the Senior President's Practice Statement, I find that further, additional fact-finding will be required in this appeal and that the appropriate venue is the First-tier Tribunal. There is no reason to disturb the findings of fact made by the judge regarding the circumstances of the appellant as they were as at the date of the hearing. The decision will be remade before a judge other than First-tier Tribunal Judge R Chowdhury.

## **DECISION**

The decision of the First-tier Tribunal is set aside and shall be remade in the First-tier Tribunal at Hatton Cross, before a judge other than First-tier Tribunal Judge R Chowdhury.

## **ANONYMITY**

There has been no application for anonymity and I make no direction on this occasion.

Signed

Date

Deputy Upper Tribunal Judge R C Campbell