Upper Tribunal
(Immigration and Asylum Chamber)
IA/51679/2013

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House, London	**Decision & Reasons Promulgated**
On 5th June 2015	**On 24th June 2015**

Before

UPPER TRIBUNAL JUDGE ROBERTS

Between
THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MRS TAYYABA ISHTIAQ
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Mr P Nath, Home Office Presenting Officer
For the Respondent: Ms M Dogra, of Counsel

DECISION AND REASONS

1. This is an appeal by the Secretary of State against the decision of Judge Davey to allow the appeal of Tayyaba Ishtiaq against the refusal of her application for leave to remain in the United Kingdom on private/family life grounds. For the sake of clarity I shall refer hereafter to the parties by reference to their status in the First-tier Tribunal.

Background

2. The Appellant is a citizen of Pakistan born 5th August 1951. Her immigration history is as follows. She arrived in the UK on 27th March 2004 with leave to enter as a visitor until 25th September 2004. On 12th August 2004 she applied for indefinite leave to remain as the parent of a settled person, a child. That application was refused by the Respondent's decision of 11th November 2004. An appeal against the Respondent's decision was

dismissed by Judge Robb on 7th March 2006. Permission to appeal that decision was refused and the Appellant's appeal rights became exhausted on 4th April 2006.

3. However further submissions were made dated 24th April 2006 and on 12th February 2009. On 5th January 2010 both of these fresh claims were refused with a right of appeal and the Appellant was served with an IS.151A. The Appellant appealed on 11th January 2010 which appeal was dismissed on 21st April 2010 by Immigration Judge M Keane. Permission to appeal was refused on 8th July 2010 and the Appellant's appeal rights became exhausted the same day.

4. The matter did not end there. On 30th November 2012 the Appellant submitted a further application for leave to remain outside the Rules. That application was refused by the Respondent on 22 November 2013 and removal directions were given. The subsequent appeal against that decision came before the FtT on 10th October 2014.

5. When the appeal came before him the Judge directed himself in the following terms:

> *"The question is whether or not the circumstances are sufficiently compelling or exceptional to engage Article 8 ECHR outside of the rules. I apply the approach identified in MF (Nigeria) [2013] EWCA 1192 and Nagre [2013] EWHC 720. I find the Appellant's personal, health and family circumstances raise issues about the care of the elderly, personal dignity and family/cultural obligations to support elderly parents are not adequately covered by the rules".*

6. He then went on to allow the appeal under Article 8.

7. Permission to appeal was initially refused by the FtT but granted, following a review, by UTJ Macleman in the following terms:

> *"Permission to appeal is granted.*
>
> ***REASONS***
>
> *It is debatable whether the determination adequately explains why the circumstances justified going beyond the Rules (paragraph 19 may be the focal point).*
>
> *The grounds rely heavily on* Kugathas, *but there is further relevant case law on family life with adult descendents, which the parties should be ready to cite at the hearing".*

The Grounds

8. There is only one ground seeking permission which is that the Judge made a material misdirection in law. There are however several strands to that one ground, as follows.

(i) No compelling or exceptional circumstances have been identified.

(ii) The Appellant failed to establish family life for the purposes of Article 8.

(iii) There was a failure in assessing whether it was proportionate for the Respondent to be removed to Pakistan.

(iv) A failure to consider Section 117(b) of the Nationality, Immigration and Asylum Act 2002 (as amended by Section 19 of the Immigration Act 2014)

The FtT Hearing

9. The Judge in his decision records at [19] :

> *"The question is whether or not the circumstances are sufficiently compelling or exceptional to engage Article 8 ECHR outside of the rules. I apply the approach identified in MF (Nigeria) [2013] EWCA 1192 and Nagre [2013] EWHC 720. I find the Appellant's personal, health and family circumstances raise issues about the care of the elderly, personal dignity and family/cultural obligations to support elderly parents are not adequately covered by the rules".*

10. At [20] the Judge he says the following:

> *"I take full account of the family relationships as currently evidence by the statements of evidence before me. It is clear that there is a regular and ongoing family relationship in the United Kingdom that goes far beyond private life considerations although plainly the Appellant has but in a limited sense a private life within the United Kingdom".*

11. Then seemingly contradictorily in [21] the Judge says:

> *"I take into account although it comes from children the remarks made on behalf of two grandchildren in relation to this as well as the evidence generally from the Appellant's children as to their wish to have her in the United Kingdom and to support her themselves. It appears to be realistically accepted that the Appellant could on return, have maids or a housekeeper although it is said that those would be far less satisfactory than the care and help provided by the family themselves".*

12. He follows this up at [22] and [23] when he says:

> *"It seems inevitable in a country as large as Pakistan that home help, carers, maids and the like are going to be available, Their availability may not be as satisfactory and they may not be as reliable as family members in caring but of itself her care for whatever may be her physical conditions currently in remission or undergoing treatment or medication it does not seem to me that those are matters that militate significantly in favour of remaining.*
>
> *The medical evidence out-of-date* (sic) *and has not been updated: it could well have been. I simply do not accept that it is reasonable to conclude on*

the medical evidence of which the most recent is in 2012 that that indicates that the Appellant could not return to Pakistan".

Has the Judge Erred?

13. I find that the decision of the FtT must be set aside for material error. I see no adequate reasoning allowing the Judge to reach the conclusion he did in [20]. Likewise in [25] where he says;

> *"For the reasons given before it seems to me that the close relationship between the Appellant and her children in the United Kingdom and the lack now of any of her children being in Pakistan that the position has factually changed and moved along. In this appeal there appeared to have been significantly more openness and honesty by the Appellant, even if not a great deal of insight, in the representations made by the family on behalf of the Appellant and the evidence called".*

14. The Judge then goes on to say in [26]

> *"…it would be disproportionate for the Appellant to be removed because of the adverse impacts upon her arising from family separation and the circumstances to which she would return to in Pakistan as a woman on her own….I find the Appellant has a clear dependency upon her children over and above that normally to be found between a parent and child".*

I find I am hard-pressed to find any reasons why the factors set out in paragraph [25] and [26] amount to dependency "over and above that normally to be found between a parent and child". The Judge rounds his determination off by saying that given the age and circumstances of the Appellant, she fails under the Rules because she has not lost her language, cultural, historical and social ties to Pakistan.

15. These apparent contradictions in the findings and conclusions render the factual matrix of this decision unsustainable.

16. For these reasons I set aside the determination of the FtT. Since the findings made are unsustainable I consider this an appropriate case to be remitted to that Tribunal for a full rehearing and for full findings of fact to be made taking into account the jurisprudence under Article 8 ECHR.

Decision

17. The decision of the First-tier Tribunal is set aside. The appeal is remitted to that Tribunal for the decision to be remade before a Judge other than Judge Davey. No findings of fact are preserved.

No anonymity direction is made as none was asked for.

Signature **Dated**
Judge of the Upper Tribunal