



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/51775/2013

THE IMMIGRATION ACTS

Heard at Field House
On 13 February 2015

Decision & reasons Promulgated
On 6 March 2015

Before

DEPUTY JUDGE OF THE UPPER TRIBUNAL CHANA

Between

MR MALIK MUHAMMAD AKRAM
(anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Ms Haji of Counsel

For the respondent: Mr Tufan, Senior Presenting Officer

DECISION AND REASONS

1. The appellant, who is a national of Pakistan, born on 31 December 1929 appealed against the decision of the respondent dated 19 November 2013 to refuse him leave to remain in United Kingdom outside the Immigration Rules and pursuant to Article 8 of the European Convention on Human Rights. First-tier Tribunal Judge Nicholls allowed his appeal pursuant to Article 8 of the European Convention on Human

Rights in a determination dated 14 July 2014. First-tier Tribunal Judge Coyler gave the respondent permission to appeal on 15 September 2014.

2. Deputy Upper Tribunal Judge Davey in a determination dated 30 October 2014 set aside the First-tier Tribunal Judge's determination finding that there was a material error of law and that the case be remade in the Upper Tribunal. He stated that "the issues to be addressed are (1) whether or not it is appropriate to look at article 8 outside of the rules on the basis of the fact in the case as found by the judge and/or in the light of any further submissions on law to be made and (2) if article 8 is to be considered outside the rules, what material considerations including the importance to be attached to the public interest in the light of the law and case law, whether that leads to a decision being established as disproportionate".
3. Thus the appeal came before me.

REMAKING OF THE DECISION

The Hearing

4. The appellant gave oral evidence through an interpreter and adopted his written statement dated 20 June 2014. He gave the following evidence which I summarise. When his wife died on 15 April 2013, his children would send him money and he hired a servant to look after him. The difficulty is that a man cannot keep a housemaid. He has a three-bedroom house.
5. The appellant was asked who Tanveer is, who is named on his wife's death certificate as a person who informed the death. The appellant said it was his neighbour. His son who is a doctor came from Canada where he lives, to Pakistan when his wife was ill. He was asked why the death certificate says that Tanveer is the deceased's mother. He said that he was a neighbour who lives one or two houses away from his.
6. The appellant was asked whether it was his intention to continue to live in the United Kingdom when he came here on a visitor's visa. He said that when he came here, his sons told him that he should continue to live in this country. Asked whether he is receiving medical treatment in this country he said that he was receiving treatment in a big hospital. He could not speak and was unconscious for one week. He was like a dead body.
7. There was no re-examination.
8. I asked the appellant how is it that he does not have any family in Pakistan given that in his society the families are very big. He said that his father was the only son and his brother died. His in-laws live in another city. He has relatives but if he goes to them, they will ask for him to undergo a second marriage which he does not want to do.

9. The second witness to give evidence was Mohammed Nadeem Shahdad (hereinafter the first son) who adopted his written statement dated 30 June 2014. In examination in chief he gave the following evidence which I summarise.
10. Mr Shahdad was asked when his father came to this country on a visitor's visa, was it his intention to return to Pakistan. He replied "our mother passed away the only concern was to shift him somewhere as no one was there to look after him". The question was repeated to which he replied that his father "came to visit and he had no intention to stay here but after our mother passed away we did not have any idea how to look after him so we decided for him to stay".
11. He was asked who Tanveer is and he replied "we have a good relationship with him he is a next-door neighbour and he applied for the death certificate". It was put to him why does the death certificates state that Tanveer is the deceased mother who informed his death. He replied "because we spent a lot of time she breastfed one of my neighbour's son. It is a very close relationship that could be the reason he said that he is her son".
12. Mr Shahdad was asked why his father cannot live with Tanveer given the close relationship. He replied "we would like to, our father is our responsibility. We can't just give them to someone else to look after. It is the only reason". He added "it's more emotional and psychological. My brother left for Canada and my mother died soon after. I know my father may not last long. He is comfortable with us and our children. I don't think anyone can do that. I take him for Friday prayers. Also there is no organised care in Pakistan but there is organised care in this country."
13. Mr Shahdad was asked whether there are any family members in Pakistan, he said that there is a cousin who lives in Lahore. He was asked why his father cannot live with this cousin and he repeated that it is a big responsibility.
14. Mr Shahdad was asked whether the appellant is receiving medical treatment in the United Kingdom. He replied "we are contributing to all the costs, all the brothers". He was asked how the Parkinson's disease affects his daily needs. He said that getting up and going to the toilet he needs physical help he can't eat sometimes and needs to be fed. He and his wife primarily look after him and his sister sometimes comes as well to look after him. He takes him for coffee in the morning and to Friday prayers. He was asked after his wife died who looked after him. He said that his sister was in the United States and his brother stayed with the appellant until the appellant came to this country. He cannot return to Pakistan for the appellant to make an out of country application because he has a job and his family. The application would take 8 to 9 months or a year and he cannot stay away that long. He does not think that his father can travel for the moment.
15. In cross-examination he gave the following evidence which I summarise. It was put to him that the appellant in his evidence before the previous Judge stated that a

wheelchair was arranged for him to travel from Pakistan to the United Kingdom and why that cannot be done for his return travel. He said that that was two years ago and his father has further deteriorated. It was put to him that given that the appellant could not speak when he was in Pakistan and now he can speak, appears to be a great improvement in his condition. He said that the appellant speech has improved but he needs help. He is very emotional and sometimes starts crying. He was asked why the letter from Dr Mohammed does not give more detailed medical reports and has only written a brief letter. He said that the doctor could see that the appellant could not take off his jacket and it was obvious that he needs help.

16. Mr Shahdad was asked why the appellant not apply for settlement in the United Kingdom as a dependent adult relative. He replied "we were under stress and grieving my mother's death. There was no one there and I had limited knowledge of immigration law and my immediate thought was to shift him so he can be looked after". The family was in the majority in the United Kingdom and he did not want to waste time applying for a settlement visa. He was asked how he knows that there is a settlement visa if he did not have any information about immigration law. He said I do not know "the nitty-gritty". He said that there was an urgency because his brother had to go back to Canada. His mother was diabetic and more or less bedridden. He was asked and who looked after his parents at that time to which he replied they hired house help and his mother managed that. He was asked why Tanveer cannot look after him. He said that Tanveer "is not a brother but a neighbour. We want to look after him we don't want to give responsibility to someone else." It is not fair on anyone to look after him and only his family can give this support.
17. In re-examination he was asked whether his father had an intention to return when he made his application for a visitor's Visa. He said "he always wanted to go back he had no choice I don't know his intention if he wanted to return. I did not ask him".
18. I asked him who made the decision for him to come here on a visitor's visa any said that it was a family decision. Asked what their intention was at the time, he replied "we did not think through what is going to happen- for the next six months. We just thought let's bring him to the United Kingdom and then think". He is paying for the appellant's medical treatment. I asked him then why does the appellant have an NHS number as indicated in the doctor's letter. He said that his father was being treated on the NHS. He did not know that his father as a visitor was not entitled to be treated at the NHS. They only paid for his dental bills he does not have any medical records for the appellant.
19. The third witness to give evidence was Mr Waseem Shahid Malik who adopted his written letter dated 3 December 2013. In examination in chief he gave the following evidence which I summarise. In 2012 his parents came to the United Kingdom for two weeks and he returned with them to Pakistan. He stayed with them in Pakistan until they could make another application for a visa because the appellant needed to wait for six weeks before he made another application for a visitor visa. He visited Pakistan six times from 2012 to 2014. The health facilities in Jhelum where the

appellant lived are not up to the level like in Islamabad. He and his father were travelling to and forth to the hospital. They did not make an application for settlement because he has not had the time for the last two years. He is a self-employed engineer and his business has been damaged. "if I go back to Pakistan I will live there for ever" but he has a wife and children in this country who do not wish to relocate to Pakistan.

20. Mr Malik was asked who is paying for the appellant's medical treatment and he said "I think we are jointly paying". He was asked how much does he contribute to the medical bills for the appellant and there was a long silence. He said that he sent about £1000 to Pakistan when the appellant was in hospital. He was asked how much did he pay in the United Kingdom, he said they did not count money between brothers. He was asked again and he said "maybe a thousand pounds from me".
21. In cross-examination he was asked who is Tanveer. He said "he is my brother". He lives in Pakistan and confirmed Tanveer is his mother's and father's son.
22. In re-examination he was asked why can't Tanveer look after the appellant, he said "I think he is very old and sick and the socio-economic circumstances". He was asked how far does Tanveer live from the appellant's house. He said "I do not know I have been living out of Pakistan for 25 years. I don't know how many times he has changed his accommodation".
23. I asked him whether it is costing a lot of money to look after his father in Pakistan. He said "yes of course it was". I asked him whether his father gets medical treatment on the NHS to which he replied that he does.
24. I heard submissions from both parties and the full notes of the hearing are in my Record of Proceedings.

Findings of Fact

25. In determining whether the appellant's removal from the United Kingdom would constitute a disproportionate interference with his right to respect for private and family life under Article 8, I have considered each of the following issues, as laid down in **Regina v. Secretary of State for the Home Department, ex parte Razgar [2004] UKHL 27** at paragraph 17 of the speech of Lord Bingham of Cornhill:
 - (1) Will the proposed removal be an interference by a public authority with the exercise of the applicant's right to respect for his private or family life?
 - (2) If so, will such interference have consequences of such gravity as potentially to engage the operation of Article 8?
 - (3) If so, is such interference in accordance with the law?

- (4) If so, is such interference necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others?
- (5) If so, is such interference proportionate to the legitimate public end sought to be achieved?
26. The question that I have to decide is whether the refusal of leave to the appellant, 'in circumstances where the life of the family cannot reasonably be expected to be enjoyed elsewhere, taking full account of all considerations weighing in favour of the refusal, prejudices the family life of the applicant in a manner sufficiently serious to amount to a breach of the fundamental right protected by article 8' (**Huang v Secretary of State for the Home Department** [2007] UKHL 11 ('**Huang**'), para. 20). In considering this question, we have taken into account all factors that weigh in favour of the Appellant's deportation, including the desirability of applying a workable, predictable, consistent and fair system of immigration control (**Huang**, para. 16). Against this, I have taken into account the effect that refusal of leave would have on the enjoyment of the appellant's private and family life in the appellant's case, bearing in mind the core value that Article 8 of the Human Rights Convention seeks to protect and the fact that '[t]heir family, or extended family, is the group on which many people most heavily depend, socially, emotionally and often financially' (**Huang**, para. 18).
27. I have further considered the case recent decision of the House of Lords in **Beoku-Betts (FC) (Appellant) v Secretary of State for the Home Department** [2008] UKHL 39 where the issue for determination was phrased in the following terms:
- 'In determining an appeal under section 65 of the Immigration and Asylum Act 1999 (the 1999 Act) (now sections 82 and 84 of the Nationality, Immigration and Asylum Act 2002 (the 2002 Act)) against the Secretary of State's refusal of leave to remain on the ground that to remove the Appellant would interfere disproportionately with his article 8 right to respect for his family life, should the immigration appellate authorities take account of the impact of his proposed removal upon all those sharing family life with him or only its impact upon him personally (taking account of the impact on other family members only indirectly ie. only insofar as this would in turn have an effect upon him)?
28. Baroness Hale observed that 'the right to respect for the family life of one necessarily encompasses the right to respect for the family life of others, normally a spouse or minor children, with whom that family life is enjoyed'. It was further said that: 'Together these members enjoy a single family life and whether or not the removal would interfere disproportionately with it has to be looked at by reference to the family unit as a whole and the impact of removal upon each member. If overall the removal would be disproportionate, all affected family members are to be regarded

as victims'. In light of this decision I have to consider the family life of all those who share their family life with the appellant which primarily are his sons and his daughter who live in this country.

29. I have also had regard that from 28 July 2014 section 19 of the Immigration Act 2014 is brought into force: article 3 of the Immigration Act 2014 (Commencement No 1, Transitory and Saving Provisions) Order 2014 (SI 2014/1820). This amends the Nationality, Immigration and Asylum Act 2002 by introducing a new Part 5A which contains sections 117A, 117B, 117D and 117D. Part 5A only applies where the Tribunal considers Article 8(2) ECHR directly.
30. It was accepted by Mr Tufan that the first four questions in **Razgar** must be answered in the affirmative. Therefore the only question that remains is whether the respondent's decision is proportionate to the respondent's legitimate interest in a fair and transparent immigration control.
31. I guide myself that I must make a fact sensitive assessment of the appellants' circumstances and make my own assessment of proportionality. It is obvious that respect for a claimant's family and private life under Article 8 (1) is subject to proportionate and justified interferences in pursuit of a legitimate aim under Article 8(2). (**Izuazu**)
32. I have considered all the evidence in this appeal including evidence to which I have not specifically referred.
33. The appellant's case is that he is 84 years of age and quite severely disabled and cannot care for himself. He came to the United Kingdom as a visitor on 22 May 2013 after the death of his wife on 15 March 2013 as he felt very lonely. He cannot return to Pakistan as he will be there on his own and has no family in that country. He is currently living with his son and his son's family. He likes living close to his sister lives in this country and it is reassuring to know that she is nearby. His health has deteriorated and is not able to fend for himself anymore because he suffered a stroke in 2011. He has also been diagnosed with Parkinson's disease and suffers from hypertension. No one in Pakistan will be able to give him the care that he needs.
34. The Court stated in **Mokrani v France [2003] 40 EHRR 123**, paragraph 33: "Relationships between adults do not necessarily benefit from protection under Article 8 of the Convention unless the existence of additional elements of dependence other than normal emotional ties can be proven."
35. The appellant's evidence and that of his first two sons who give evidence was that there is no family member in Pakistan who can look after the appellant. His case has been put on the basis that the appellant cannot return to Pakistan because there is no one there to look after him after his wife's death in March 2013.

36. At the hearing, it became apparent that someone named Tanveer informed the authorities of the appellant's wife's death. The appellant and Mr Shahad said that Tanveer he is the appellant neighbour who lives two doors away in Pakistan. Mr Shahzad, said that Tanveer is "like a cousin" and a neighbour who has "sucked on his mother's breast" when he was a baby and is very close to the family. Mr Malik in his evidence however at the hearing said that Tanveer is his brother and confirmed that he is his parent's son. This inconsistency in the evidence goes to the appellants and his son's credibility. It also demonstrates that the appellant and his sons are not being truthful about the appellant circumstances in Pakistan.
37. Mr Malik was also inconsistent about not knowing where Tanveer lives and said that he does not remember how many addresses Tanveer has changed. This is remarkable evidence given that his evidence also was that he has returned to Pakistan on six occasions to look after the appellant.
38. When the appellant made his visitor visa application he signed the Declaration that he is aware that it is an offence under the Immigration Act 1971 (as amended) to make a statement which he know to be false or not believe to be true, in order to obtain a Visa/entry clearance to the United Kingdom. The appellant said that he did as he was told by his sons. Mr Shahzad said that after their mother died the first thought in their head was "to shift" the appellant to the United Kingdom. After much questioning, it was accepted that the Mr Shahzad was making the decisions on the appellant's behalf, knew that the appellant was not going to return to Pakistan. I find that the appellant came to this country on a visitor's visa and had no intention to return and this also goes to his credibility.
39. In **Kugathas v SSHD [2003] EWCA Civ 31**, a case which concerned an adult's relationship with his mother and adult siblings, the Court of Appeal thought that the following passage in **S v United Kingdom [1984] 40 DR 196** was still relevant:
- "... generally, the protection of family life under Article 8 involves cohabiting dependants, such as parents and their dependent minor children. Whether it extends to other relationships depends on the circumstances of the particular case. Relationships between adults ... would not necessarily acquire the protection of Article 8 of the Convention without evidence of further elements of dependency, involving more than the normal emotional ties."
40. However, the Court of Appeal considered that the further element of dependency did not have to be economic. Accordingly, in the case of the "other relationships" referred to, it will be necessary to show that ties of support, either emotional or economic, are in existence and go beyond the ordinary and natural ties of affection that would accompany a relationship of that kind.
41. The appellant's children have been living in the United Kingdom and the appellant has been living in Pakistan. This demonstrates that his emotional ties with his children were normal emotional ties expected between adults and their parents.

42. I accept that the appellant is not in good health. The appellant has a son who lives in Pakistan a fact which the appellant and his two sons have attempted to conceal. There is no credible reason to believe that the appellant cannot get this personal and everyday care in Pakistan as his son can look after him which I find he did before the appellant came to the United Kingdom.
43. Therefore the appellant came to this country as a visitor on 22 May 2013. The evidence is that he was not well in Pakistan as he had already suffered a stroke in 2011. At the hearing the evidence was that he was in a big hospital in Islamabad which cost a lot of money and had lost his speech. He has in fact recovered and has resumed his speech. From the evidence given by the appellant's sons, it is clear that the appellant required medical treatment. The appellant and his sons conceded that the appellant is getting medical treatment on the NHS. Mr Malik said that medical treatment in Pakistan is very expensive and he had to send about £2000 to Pakistan for his treatment after he had a stroke.
44. I therefore find that the likely explanation for why the appellant came to this country was to seek medical treatment on the NHS, a service to which he is not entitled as a visitor. I also do not accept the appellant's son's evidence that he did not know that the appellant was not entitled to treatment on the NHS because at first he said that the appellant is being medically treated privately which is not true as evidenced by his NHS number on the file and the evidence of the appellant's witnesses that he is being treated on the NHS.
45. The only evidence of the appellant's medical health is a letter from Dr Ahmed who briefly lists the appellant's conditions. At the hearing Mr Shahzad was asked why he does not have any other medical records for his father and whether the doctor has diagnosed the appellant based on what he has been told by the appellant. He said that it must have been obvious to the doctor when the appellant could not take off his jacket, that it is difficult for the appellant to do some things.
46. I find that the doctor has written that letter based on what he was informed by the appellant and his sons. There are no other medical records provided. I therefore place no reliance on the doctor's letter to show that the appellant cannot return to Pakistan to be looked after by his son in that country.
47. At first, he said that the appellants had said that the family did not apply for a settlement visa because he did not know anything about the Immigration Rules. He then said in complete contradiction that it would have taken 8 to 9 months for the application to be decided which was too long. He said that they were acting as a matter of urgency because there was no one to look after the appellant in Pakistan. This is not true because the appellant has a son who lives in Pakistan.
48. In his visa application the appellant said that he receives a pension. He also stated that he receives an income of \$300 per month from his son and also has a property in Marla Worth, worth US\$200,000. He also stated that he has two lakh Pakistani rupees

available to him for his visit to the United Kingdom. This demonstrates to me that the appellant has sufficient finances to be self-reliant financially in Pakistan. The appellant also has a son who lives in Pakistan and therefore he has ties and someone to look after him on his return to Pakistan. I do not accept the appellant's evidence that he does not have other relatives in Pakistan.

49. I am not persuaded by Ms Haji's submission that the appellant would inevitably succeed pursuant to the Immigration Rules and in line with the case of **Chikwamba**, he should not be required to return to Pakistan to make an application because due to his ill-health and the fact that there is no one to look after him in Pakistan. Given that the appellant has a son in Pakistan, this submission is not persuasive.
50. I find there are no compelling circumstances in the appellant's case for him to succeed pursuant to Article 8 when he cannot succeed pursuant to the Immigration Rules for entry clearance as an adult dependent relative of a person present and settled in this country.
51. Considering all the evidence in the round I find that even if there is some disturbance in the appellant's private life that he has formed in this country with his sons and sister, it is not sufficient to trump the interests of the respondent for a fair, transparent and orderly immigration control. In the cases of **Shahzad (Art 8: legitimate aim) [2014] UKUT 85 (IAC)** and **FK & OK (Botswana) v Secretary of State for the Home Department [2013] EWCA Civ 238**, emphasise the importance of the public interest in any evaluation of Article 8. I find that the appellant has attempted to circumvent the Immigration Rules and this affects the respondent's fair transparent and orderly immigration control.

Decision

Appeal dismissed

Signed by,

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A Deputy Judge of the Upper Tribunal
Mrs S Chana

Dated this 6th day of March 2015