



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

Appeal Number: IA/34226/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 20 January 2016**

**Decision Promulgated
On 5 February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MOHAMMAD SHAFIQUE
(ANONYMITY ORDER NOT MADE)**

Respondent

Representation:

For the Appellant: Mr P Duffy (Senior Presenting Officer)

For the Respondent: Mr S Iqbal (Lincolns Solicitors)

DECISION AND REASONS

1. This is the appeal of the Secretary of State against the decision of the First-tier Tribunal allowing the appeal of Mohammad Shafique, a citizen of Pakistan born 2 July 1943, against the decision to refuse his application for further leave to remain and to set removal directions against him under Section 47 of the Immigration Asylum and Nationality Act 2006 of 31 July 2014.

2. The application of 20 March 2014 was for indefinite leave to remain outside the Immigration Rules. A letter from the Appellant's daughter Dr Erum Shafique set out that her father's coronary syndrome had deteriorated, due to the solitude, lack of social support absent any circle of friends, and the bereavement he suffered after his wife's death in March 2010, all of which left him with frequent chest pains and a depressed disposition, meaning he was unable to attend to his dietary needs. Servants were not a solution as they were not easily available and could not be relied upon: robbery and abuse was common. Her son Bilal had been largely raised by her parents during his early years in Pakistan, when she herself had been unwell, and had been especially attached to his grandfather. Her father's demeanour had significantly improved having reunited with his grandson. Since his arrival her four year old daughter had become profoundly attached to him. She herself suffered from Myasthenia Gravis, an autoimmune disease exacerbated by all forms of physical and mental stress.
3. A letter from Yahya Khalid, the Sponsor's husband, set out that his father-in-law had been visiting the family since his wife's death in 2011; his loneliness in Pakistan in addition to his multiple health problems were the main reason for this. His wife worried constantly about her father's health which affected her Myasthenia Gravis and trips to Pakistan to provide the necessary support were incompatible with her childcare responsibilities here: his relocation to this country was the only option. He believed it to be the family's social, moral and religious obligation to care for their parents. They co-owned their own home and his permanent job as a Specialty Registrar in the NHS was a guarantee of their ability to maintain and accommodate.
4. Supporting evidence included a letter from Dr Ahmed of Ihsan Mumtaz Hospital clinic of December 2013, stating he had known his patient since 2005, and that during his recent visit to the United Kingdom he had angina class III and had been advised to take a coronary angiogram which treated severely diseased vessels; he made an uneventful recovery and was allowed home in November 2013. On 7 December 2014 he was readmitted with chest pain and had successful angioplasty. He was an elderly widower and had longstanding diabetes with complications such as coronary artery disease, and lived by himself, finding it difficult to cope with social isolation and upkeep with his daily medical treatment. His only child, the Sponsor, lived in the United Kingdom, and was the only close family member who could realistically look after him. He strongly recommended his rehabilitation with his daughter here on medical grounds: she could provide him with family support and a caring environment during the trying times he faced.
5. The application was refused because, having arrived here as a visitor the Appellant had no legitimate expectation of settlement and should have planned on the basis of returning to Pakistan; he had received medical treatment there and had been fit enough to travel here. He had not needed emergency treatment. His relationships with individuals here did

not qualify for consideration under Appendix FM and he had not established he had severed ties with Pakistan. His daughter's work commitments called into question her claim to be willing to care for him such as to avoid his becoming a charge on public funds. He had not evidenced the asserted health problems of an elderly niece and her husband who had previously cared for him in Pakistan. His application was additionally refused under the general refusal reasons in that he had not honoured a declaration as to the intended duration of his visit. It was noted that the application arose wholly outside the Rules.

6. The First-tier Tribunal, having directed itself that the appeal could not succeed applying Article 3 ECHR having regard to the high threshold set by the well known precedents such as *GS India* [2015] EWCA Civ 40 which emphasised the high threshold set by the Strasbourg Court in *N v United Kingdom* 2008 47 EHRR 885, proceeded to consider the case under the Immigration Rules, noting that the general refusal reason was made out as, on balance of probabilities, the visit had been a contrivance to enter the United Kingdom with a view to availing himself of the superior medical facilities here. His claim to be unable to integrate in Pakistan was unsuccessful given he had previously negotiated complex medical treatment there and had the financial support of his daughter to help him. The First-tier Tribunal rejected his claim to lack personal care in Pakistan because of the dangers posed by carers, which was unevidenced. There was no independent medical evidence as to his unfitness to fly, and his last heart attack had been some six months earlier.
7. As to his claim under Article 8 under the Rules, the Appellant and the Sponsor were close, and the Appellant was also close to his two grandchildren and son-in-law. Their relationship extended over many years and they had cohabited before the Sponsor's migration to this country; the Appellant had spent some half of the last three years with her. The interference with the relationships within the nuclear family unit would plainly be significant were the refusal upheld.
8. That left proportionality. He spoke fluent English and was not a burden on the state regarding accommodation; financially the Sponsor could amply maintain him. He was part of an integrated British family including breadwinners working hard and contributing to public funds via their work for the NHS. Indubitably there were public policy considerations which counted against the application's success: he had no legitimate expectation of settlement when he arrived here, had been a charge on NHS funds, and his actions threatened effective border control. It would be a disproportionate interference with family life to expect the Appellant to return to Pakistan given the length and strength of their relationships and the integration of the Appellant into the family here and the mutual dependencies that ensured from this.
9. Mr Duffy for the Appellant accepted that this appeal was essentially a perversity challenge, and contended that no reasonable judge could have come to these conclusions. The lack of intention to return to Pakistan was

a factor which should have received more significant weight than had been attributed to it, and there was no evidence of a lack of care abroad. For Mr Shafique it was submitted that the human rights claim had been a tenable one given the established relationships in this country, and it had been perfectly rational for the First-tier Tribunal to focus upon them; the public interest as expressed by section 117 of the Nationality Immigration and Asylum Act 2002 had been fully considered.

Findings and reasons

10. This was an application and appeal pursued firmly outside the Immigration Rules. Accordingly the question was essentially whether the circumstances were ‘compelling’ such as to produce ‘unjustifiably harsh consequences’ so as to outweigh the public interest”, having regard to principles of proportionality bearing in mind that Aikens LJ in *MM & Ors* [2014] EWCA Civ 985 stated that “in any event it would be necessary to apply a ‘proportionality test’ with regard to the ‘exceptional circumstances’ guidance in order to be compatible with the Convention and in compliance with *Huang* at [20].” As it was put in *SS (Congo) & Ors* [2015] EWCA Civ 387, “it is accurate to say that the general position ... is that compelling circumstances would need to be identified to support a claim for grant of LTR outside the new Rules”. At [48] the Court goes on:

“What does matter, however - whether one is dealing with a section of the Rules which constitutes a “complete code” (as in *MF (Nigeria)*) or with a section of the Rules which is not a “complete code” (as in *Nagre* and the present appeals) - is to identify, for the purposes of application of Article 8, the degree of weight to be attached to the expression of public policy in the substantive part of the Rules in the particular context in question (which will not always be the same: hence the guidance we seek to give in this judgment), as well as the other factors relevant to the Article 8 balancing exercise in the particular case (which, again, may well vary from context to context and from case to case).”

11. The First-tier Tribunal gave very clear reasons for its decision, which are certainly not flawed by any misdirection of law: as accepted by Mr Duffy, the only challenge which could be mounted was one that alleged its conclusions were so unreasonable that no reasonable Tribunal could have formed them. The matters upon which he founded the Secretary of State’s assault were essentially that inadequate weight had been given to factors such as immigration control given the finding that there had never been any intention to return abroad at the expiry of the visit visa, and given the cost to public funds that Mr Shafique’s medical treatment would have occasioned.
12. Classically, questions of weight are for the primary fact-finder. Here the First-tier Tribunal expressly stated that this was a finely balanced decision which could have been concluded either favourably or adversely to Mr Shafique. The two public interest factors with which the Home Office takes issue were expressly identified: it cannot be said that they were overlooked. The statutory criteria by which Parliament has articulated a

distinct expression of the public interest were overtly attributed weight, as were other factors which are relevant given the clear policy position that can be seen within the Immigration Rules generally, which stress the need for visitors to hold an intention to depart at the expiry of their authorised period of stay, and aim generally to protect public funds. There was no source of alternative care readily identifiable from the available evidence, particularly given the emotional proximity and professional qualifications of the sponsoring family members in this country.

13. Having identified the relevant public interest considerations, the First-tier Tribunal found that other factors present in the case, such as the close bond of the family unit and the Appellant's age and vulnerability, carried the day for the family's collective life notwithstanding certain public interest factors pointing in the other direction. So both the requirements of statute and the enjoinder in *SS (Congo)* to have regard to policies expressed by the Rules were loyally followed. The Tribunal was clearly aware of the general position under the Rules that adult dependent relative applications should be pursued from abroad, but found that there was a compelling case to depart from the norm here. An appeal based on perversity grounds must reach a high threshold to succeed, and given the detailed reasoning here and the impeccable balancing exercise, I do not consider that any error of law has been made out here.

Decision:

The decision of the First-tier Tribunal did not contain a material error of law.

The appeal is dismissed

A handwritten signature in black ink, appearing to read 'MAS', with a long, sweeping underline that extends to the left and then curves back under the signature.

Signed:
Deputy Upper Tribunal Judge Symes

Date: 20 January 2016