IAC-AH-SC-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: IA/35300/2014
IA/33297/2013

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 2nd December 2015	**On 28th January 2016**

Before

UPPER TRIBUNAL JUDGE D E TAYLOR

Between

SUGHRA BIBI (FIRST APPELLANT)
ERRAM MEHBOOB QURESHI (SECOND APPELLANT)
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Miss L Mair of Counsel instructed by Prolegis Solicitors
For the Respondent: Mr Diwncyz, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellants' appeal against the decision of Judge Hillis made following a hearing at Bradford on 12th January 2015.

Background

2. The appellants are citizens of Pakistan born on 10th April 1939 and 1st January 1975 respectively. The first appellant is a widow. She has six children, four of whom are resident in the UK. The eldest daughter is

married and lives in Pakistan. The youngest is the second appellant. She has been deaf and mute since birth.

3. The appellants came to the UK to visit the family sponsored by the second eldest son, and last entered on 1st June 2012. They had previously visited and returned within the currency of their visas but on this occasion, because, it is said, of the failing health of the first appellant and the second appellant's disability, they decided to apply for leave to remain in the UK.

4. It was agreed that they could not meet the requirements of the Immigration Rules.

5. The judge found that the first appellant has a number of health conditions, which were worsening as she became older. However he did not accept that the appellants enjoyed a family life with the UK relatives and therefore failed to show that Article 8 was engaged. He also considered the proportionality of removal and concluded that the respondent's decision was proportionate to her legitimate aims of maintaining the economic wellbeing of the UK.

The Grounds of Application

6. The appellants sought permission to appeal on the grounds that the judge had cited the wrong test to be applied in Article 8 cases, that he had wrongly addressed himself to the question of whether the appellants were dependent upon the UK family prior to their arrival here, that he had made material errors of fact in respect of the health of both appellants and had relied on immaterial considerations, specifically the appellants' ability to apply for entry clearance from abroad.

7. Permission to appeal was initially refused by Judge Foudy but granted by Upper Tribunal Judge Perkins on 12th June 2015.

8. On 26th August 2015 the respondent served a reply defending the determination.

Submissions

9. Miss Mair submitted that if an error of law was found the case should be remitted to the First-tier for a rehearing in the light of the passage of time since the original decision was made.

10. She relied on her grounds and submitted that the judge had plainly erroneously relied on the situation as it was before they came to the UK rather than focussing on circumstances as they were now. She also submitted that the judge had misconstrued the oral evidence and failed to record that the witnesses had all stated that, due to the worsening of the older appellant's arthritis, she could no longer act as a conduit for her daughter and provide a link for her to the outside world.

11. So far as the merits of the appeal was concerned, she relied on the medical evidence which showed that the first appellant's health was rapidly deteriorating. She relied on the detailed statements from her children who lived in the UK. The appellants were fully integrated into the family here. There was evidence that the remaining sister in Pakistan had never been involved in looking after them whilst they were there and, whilst she acknowledged that there was no medical evidence in relation to her, she said that she was instructed to say that the sister there suffered from hepatitis.

12. The family here were financially self-sufficient. They had paid for all of the healthcare of both appellants since they had been in the UK and there had been no reliance on the NHS. Whilst neither appellant spoke English this was not a matter to be taken against them because, in the case of the first appellant, she would be exempt from taking an English language test under the Rules and the second appellant was unable to speak.

13. Mr Diwncyz relied on the Rule 24 reply. On the merits he pointed out that there was evidence that the second appellant could speak Urdu.

Consideration of whether there is a Material Error of Law

14. I am satisfied that the judge erred in law.

15. At paragraph 9 he wrote:

> "If the applicant does not satisfy the Immigration Rules applications for entry clearance or leave to remain outside the Rules is pursuant to Article 8 where circumstances involving insurmountable obstacles preventing private or family life in the applicant's country of origin have to be established to the relevant standard of proof."

16. The paragraph is inherently unclear but in any event the reference to insurmountable obstacles is wrong.

17. Second, more importantly, it is apparent from the determination that the judge was focussing his attention on whether the appellants had lived with their UK relatives in the past and, in stating that there was no evidence of dependency or a relationship beyond normal family ties prior to them coming to the UK, did not properly assess whether family life had been established as at the date of the hearing before him.

18. Accordingly the decision will have to be remade.

19. There was no reason to adjourn the appeal to another date. The representatives have filed an indexed paginated bundle of documents for this hearing including witness statements and medical records for the appellants. Although Miss Mair would have wished to provide further up-to-date medical evidence, the representatives had that opportunity when providing the very large bundle of documents prepared for this hearing; the fact that they did not do so is not a basis for delaying the resolution of this appeal.

Findings and Conclusions

20. The starting point in my considerations is the fact that the appellants cannot meet the requirements of the Immigration Rules with respect to Article 8 since neither has a partner or minor child in the UK and neither has been in the UK for a sufficient period of time to qualify under the private life route. Indeed it was not argued by Miss Mair that there could be compliance with the Immigration Rules.

21. The first question is therefore whether the appellants enjoy family life with the UK children/siblings. I am satisfied that they do.

22. Both mother and daughter suffer from reasonably significant health issues. The first appellant is 75 years old. The second has no communication as assessed by Bradford Social Services, although she does communicate with her family members using a form of sign language developed by them. She is not able to live independently.

23. There is no presumption of family life between adult siblings and parents. Indeed family life is not established unless something more exists than normal emotional ties. Such ties might exist where there is dependency. Whist in the past it is apparent that the appellants were able to live independently in Pakistan, since they came to live in the UK, they have become increasingly dependent upon the UK based family, and as a consequence there are now more than the normal emotional ties between both the adult siblings and the adult children and their mother.

24. Removal would plainly interfere with the enjoyment of family life but would be lawful since the appellants have no basis of stay here and in pursuit of a legitimate public aim.

25. In considering the proportionality of removal I am required to apply Section 117B which sets out the public interest considerations applicable in all cases. These are as follows:

> "(i) The maintenance of effective immigration controls is in the public interest.
>
> (ii) It is in the public interest, and in particular in the interests of the economic well-being of the UK, that persons who seek to enter or remain in the UK are able to speak English because persons who speak English –
>
> (a) are less of a burden on taxpayers; and
>
> (b) are better able to integrate into society.
>
> (iii) It is in the public interest and in particular in the interests of the economic well-being of the UK that persons who seek to enter or remain in the UK are financially independent because such persons -
>
> (a) are not a burden on taxpayers; and

(b) are better able to integrate into society.

(iv) Little weight should be given to –

(a) a private life or –

(b) a relationship formed with a qualifying partner that is established by a person at a time when the person is in the UK unlawfully.

(v) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious."

26. Miss Mair sought to argue that Sections 117B(ii) and (iii) were neutral. However, the fact that the first appellant would not be required to pass an English test, and the second appellant would never be able to do so does not take away from the fact that, under Section 117B(ii), the speaking of English is in the public interest and the appellants are not able to fulfil that requirement.

27. Similarly, whereas, to date, the UK family has been able to provide for the family financially, the appellants are not financially independent and can never been financially independent.

28. The evidence before the Immigration Judge was that, whilst they were in Pakistan, the second appellant did all the cooking, cleaning and ironing under the first appellant's instructions and sometimes they would share doing the chores. It was said, and not challenged in the grounds, that there is another sister who lives about 600 metres from the appellants' home, which sits badly with the first appellant's claim at paragraph 18 of the witness statement that "her daughter in Pakistan lives a fair distance from us". There is also her own sister who lives in the same village.

29. There is extensive medical evidence in the form of patient records for the first appellant but the only diagnosis which I can find is that of diabetes and hypotension. It is said that she suffers from arthritis although I cannot see any reference to that in the records. There is a chest x-ray report but everything appears to be normal. There is also reference to a recommendation that the appellant attend a diabetic clinic and sees the chiropodist and dietician once a year.

30. Although Miss Mair submitted that the situation now is dramatically different from that which pertained when the appellants arrived on their visit visa, that is not borne out by the medical evidence. Common sense suggests that a 75 year old will be in less good health than a 72 year old, but the medical evidence does not in fact establish the deterioration which Miss Mair suggests. Indeed, there is nothing in the evidence which establishes that the first appellant is suffering from anything other than the general privations of her age.

31. It seems from the evidence before the original judge that the appellant enjoyed a comfortable lifestyle in Pakistan. Her husband was in the army and subsequently had businesses in Pakistan. She was a teacher at a local school. The family own land which they lease out. This is clearly a close family unit. There is no reason to suppose that the UK family would not be able to provide financial assistance if required. I am entirely satisfied that the elder daughter lives nearby and would be able to provide practical assistance.

32. So far as the second appellant is concerned it is absolutely clear that she cannot communicate orally although there is evidence in the medical records that she can lip read Urdu. If she went back to Pakistan she would be living in the place where she has grown up and where she has spent her entire life, aside from the last three years.

33. The first judge made the point that, even if the first appellant's arthritis had got worse over the last three years, there was no reason why she would not be able to direct the second appellant within her household tasks within the home as she did before. Although it may be that she will be less able to accompany the second appellant outside the house increasingly as she gets older, the latter still has her sister nearby who would be able to facilitate her interaction with the outside world, and there is no evidence whatsoever that the oldest daughter would be unable to help with her mother and sister because of her own health conditions.

34. Accordingly, whilst I accept, unlike the first judge, that Article 8 is engaged and that there is family life in this case, nevertheless I conclude that removal would be proportionate.

Notice of Decision

35. The original judge erred in law. His decision is set aside. It is remade as follows. The appellants' appeal is dismissed.

No anonymity direction is made.

Signed Date

Upper Tribunal Judge Taylor