



**Upper Tribunal
(Immigration and Asylum Chamber)
IA/01058/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 1 June 2017

Promulgated

On 6 June 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

MRS BUSRI BEGUM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Iqbal, Counsel instructed by Marks & Marks Solicitors

For the Respondent: Ms Z Ahmad, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal from the decision of First-tier Tribunal Judge Asjad which was promulgated on 27 September 2016. The appellant is a national of Pakistan who was born on 1 January 1948. She entered the United Kingdom on 28 April 2005 on a visit visa which was valid until 28 October 2005. In September 2004 she made an application for further leave to remain on human rights grounds and that application was refused. The refusal letter is dated 15 February 2016. Her appeal came before Judge

Asjad, who delivered a full determination making the following substantive findings in paragraphs 14 and 15:

“14. In so far as [the appellant’s] medical conditions are concerned, there is a letter from her GP dated 9 August 2017 [Mr Iqbal, acting for the appellant very properly concedes that is a typographical error and the date should in fact be 2016] that set out her current conditions. It is noted that the Appellant suffers from osteoarthritis and mixed incontinence, as well as cognitive decline and short term memory loss. There is reference in an earlier letter (dated 12 March 2015) that the Appellant suffers from Ischaemic Disease and suffered a heart attack in 2013. She also suffers with hypertension (high blood pressure) and asthma and a list of her medication has been provided. Objective evidence is relied upon by the Respondent to show that treatment from heart disease is available as well as hypertension in Pakistan. The medication that the Appellant takes for these conditions is available in Pakistan as noted at paragraph 34 of the reasons for refusal letter. Mr Azeem has not made any enquiries at all about the medical treatment or medication that is available in Pakistan apart from asking his cousin. The medical treatment available may not be of the same standard but is nevertheless available to the Appellant.

15. The Appellant is aged 68 and has lived most of her life in Pakistan. Her medical conditions are such that she is able to access treatment for them. I do not find that her medical conditions amount to a very significant obstacle. It is claimed that her illiteracy would make it difficult for her to access treatment, but the Appellant does have family in Pakistan even though the witness Nazir attempted to give evidence that suggested otherwise. There is also the possibility of Mr Azeem and his family paying for appropriate credibility for their mother in Pakistan. The fact that neither Mr Azeem nor any member of his family have even tried to find out what care or help is available is indicative of their reluctance to send their mother back to Pakistan and to keep her in the UK at their own convenience. I do not find that the circumstances are such that they amount to very significant obstacles.”

2. Having made those findings, sufficient to be dispositive of the claim under paragraph 276ADE of the Immigration Rules, the judge proceeded to consider an Article 8 claim outside the Rules and adopted the progressive approach advocated in **Razgar [2004] UKHL 27**. The conclusion to which the judge came was that whilst acknowledging that a family or private life had arisen in the United Kingdom sufficient to engage Article 8, under the proportionality assessment (particularly with regard to the statutory considerations regarding immigration control), the balance fell in favour of refusing the appellant leave to remain.

3. In advancing the appeal, Mr Iqbal makes two substantive points. The first is to criticise the judge's findings in relation to "significant obstacle", submitting that they cannot be justified on the evidence; and the second is to criticise the findings in relation to the Article 8 assessment. Mr Iqbal took me to the letter dated 9 August 2016 to which I have already made reference. The letter which emanates from Dr Imran Hussain, a General Practitioner at the Small Health Medical Practice in Birmingham, reads as follows:

"This lady attended my clinic. She has a background of multiple comorbidities. She has osteoarthritis of her joints which has affected her ability to mobilise and to stand for periods of time. She also has joint pains which affect her ability to function with her hands. She requires help with her personal hygiene and shower needs and finds it difficult to be independent of help in her personal activities of daily living. She also occasionally bed wets herself at night and requires help with this. She seems to have mixed incontinence for which she is going to be assessed further. She also complains of her memory being not what it used to be. Her memory test shows cognitive decline and short term memory loss. She is going to be assessed further for these complaints."

4. The thrust of Mr Iqbal's submissions is that the judge failed to give proper and adequate regard to the content of that letter. In my assessment that submission is ill-founded. The judge incorporates by reference the entirety of the content of that letter and it is neither necessary nor appropriate to recite each and every sentence. The judge clearly had very much in mind all that was said in that letter having regard to the appellant's health and physical limitations.
5. Mr Iqbal suggests that the judge was wrong to conclude in paragraph 15 that the appellant will be able to have access to treatment for her medical conditions when in Pakistan and refers to the fact that she would be a loan woman without any family or other support. Again I do not find substance in this criticism. It is quite clear that the judge had very much in mind that the appellant would be returning alone to Pakistan and might experience difficulty in obtaining medical treatment, notwithstanding that it was available. The findings to which the judge came in paragraphs 14 and 15 were open to her on the evidence, including the capacity of the appellant's family in the United Kingdom to provide financial support for the provision of appropriate care for their mother in Pakistan. I do not consider there to be any misreporting or misconstruction of the evidence in the course of the judge's conclusions.
6. As to the gravamen of Mr Iqbal's complaint, concerning the judge's proportionality assessment, I do not consider that this amounts to an error of law. Proportionality by its very nature is a test best made by the primary fact-finder who hears evidence and assesses credibility. In the absence of an error of law, it is not for the supervisory jurisdiction of the Upper Tribunal to look afresh at a discretion exercised by the First-tier

Tribunal. I can find no error of law in this determination. The conclusions to which the judge came were perfectly open on the evidence. The reasoning is clearly expressed. The law has been properly applied. Mr Iqbal, understandably, did not address me on the appellant's immigration history which the judge summarised at paragraphs 23 to 25. The judge's application of the public interest considerations in section 117B of the Nationality, Immigration and Asylum Act 2002 are not susceptible to criticism. The proportionality assessment is not one which can be impugned.

7. I can well understand that the appellant, her family and her advisors may be unhappy with what they perceive as a harsh result, but such unease does establish a material error of law.

Notice of Decision

Appeal dismissed.

No anonymity direction is made.

Signed *Mark Hill*

Date

2 June 2017

Deputy Upper Tribunal Judge Hill QC