Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/07047/2017

THE IMMIGRATION ACTS

Heard at The Upper Tribunal, Bradford	**Decision & Reasons Promulgated**
On 10th July 2018	**On 18th July 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

QAISAR BI
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mrs R Pettersen, HOPO
For the Respondent: Ms S Khan of Counsel, instructed by Legal Justice Solicitors

DECISION AND REASONS

1. This is the Secretary of State's appeal against the decision of Judge Bradsaw made following a hearing at Bradford on 4th August 2017.

Background

2. The claimant is a citizen of Pakistan born on 1st January 1935. She entered the UK on 11th April 2016 as a visitor and, on 27th July 2016 applied for indefinite leave to remain

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in the UK outside the Immigration Rules. She was refused on 2nd June 2017 and it was this refusal which was the subject of the appeal before Judge Bradshaw.

3. Judge Bradshaw recorded that it was not in issue that the claimant could not succeed under the Immigration Rules because there was no in-country route as an adult dependent relative, but only an application for entry clearance.

4. She stated that she had to take into account Sections 117A to D of the Nationality, Immigration and Asylum Act 2002, in particular Section 117B(2) which provides that the maintenance of immigration control is in the public interest and it is in the public interest and in particular 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 people who can speak English are less of a burden on taxpayers and better able to integrate into society.

5. In a detailed and thoughtful determination Judge Bradshaw then set out the evidence and her findings.

6. The judge noted that the claimant had a daughter in Pakistan and a son and two daughters in the UK. Whilst there, she received financial support first from her husband and also from her grandson who was now no longer able to afford to do so. She received practical help at home from her daughter, who lives an hour to an hour and a half away and, more latterly, from her granddaughter who has now married and is coming to the UK.

7. Judge Bradshaw reviewed the medical evidence and said that there was no medical evidence to show that she was currently unwell or that she needed any specific secondary or specialist care and certainly no urgent medical treatment in the UK. The claimant is under the care of a GP who has provided certain medication but she is now stable. She does however require extensive assistance because she is physically disabled and cannot self-care.

8. Judge Bradshaw regarded the claimant's daughter-in-law's evidence to be somewhat unconvincing in relation to the possibility of hiring someone in Pakistan to care for her mother-in-law and she noted that Ms Kauser confirmed that the family had carried out no research on the availability of suitable paid care. Judge Bradshaw found the report from an independent occupational therapist to be unreliable and unhelpful.

9. On the other hand, she found the claimant's evidence clear and credible and was satisfied that she needed 24/7 care. She said that to return her to Pakistan would mean a family member accompanying her and staying with her until proper care could be arranged. It might well be possible to pay for care but she would require more than a maid and her age, sex and cultural sensitivities and the nature of the personal care required would be very difficult to fulfil outside the family.

10. She recorded that there was no reasonable expectation of her learning much English and concluded as follows

> "She came to the UK with limited leave as a visitor knowing as her family did that she had to return to Pakistan when her leave expired. However, her frailty, age and care needs are such that it is not proportionate to require her to return to Pakistan where her extensive and daily care needs could only be provided with some difficulty and without the close personal female and family care she needs together with associated emotional care. Her daughter in Pakistan by reason of distance alone could not be on hand daily to provide such care even if she could to some extent oversee paid care."

11. She allowed the appeal on human rights grounds.

<u>The Grounds of Application</u>

12. The Secretary of State sought permission to appeal on the grounds that the judge had erred in her consideration of the availability of medical care for the claimant in Pakistan. The family in the UK had brought her here in the full knowledge that she would be required to return and she had failed to cite any insurmountable obstacles to the family returning to Pakistan with her to continue their family life there instead. The judge had entirely failed to consider Section 117B. The claimant was likely to be a considerable burden on the NHS and may not be able to successfully integrate into British society.

13. Permission to appeal was granted by Judge O'Brien on 30th January 2018 for the reasons stated in the grounds.

<u>Submissions</u>

14. Mrs Pettersen relied on her grounds. She submitted that it should have been a weighty matter for the judge that the claimant arrived as a visitor with no expectation of being allowed to remain here. Her care needs were not such as to satisfy the adult dependency rules. The judge had made contradictory findings in relation to the credibility of the daughter-in-law's evidence which did not sit well with her overall conclusions. It would be possible for a female nurse to attend to the claimant in Pakistan and had the judge properly considered Section 117B she would have reached the conclusion that the appeal ought to have been dismissed.

15. Ms Khan defended the determination. She reiterated that the crux of this case was not medical care but personal care which could only be provided by female family members. The judge was entitled to agree with the submissions made that, for this particular appellant, attendance upon her by the family was essential. The judge had noted the claimant's status as a visitor. She was not a drain on the economic resources of the UK since all of the care was provided to her by family members and it was merely speculative to conclude that she would require the NHS resources in the future. The judge had explored the option of the daughter in Pakistan providing assistance but had reasonably rejected it, given that she lives some way away. The claimant's state of health was stable but even if it were accepted that she might be an economic drain on the country the judge was entitled to conclude that her personal needs were such as to defeat the arguments put forward by the Secretary of State.

16. Finally, Ms Khan said it had been argued before the judge that the claimant did in fact meet the requirements of the Immigration Rules with respect to private life and paragraph 276ADE(1)(vi), namely that there would be very significant obstacles to the applicant's integration into the country to which she would have to go if required to leave the UK.

Findings and Conclusions

17. The Immigration Judge did refer to paragraph 117B at paragraph 10 but I am persuaded that she did not have it in mind when reaching her overall conclusion. Although Ms Khan strongly submitted that it was mere speculation that the claimant would be an economic burden, it is quite clear that a woman of 83 years old, who is physically disabled to the point where she needs 24-hour care and who already has received treatment from the GP, is very likely indeed to require assistance in the future from the NHS.

18. It is not in the interests of the economic wellbeing of the UK for the claimant to be permitted to remain here. That is not necessarily a trump card, as Ms Khan correctly pointed out, but I cannot see from this determination that it was in the judge's mind when reaching her conclusions. There is no reference to the likely economic detriment to the UK by the claimant's presence here.

19. Accordingly the judge erred in law by failing to have regard to a relevant matter. The decision has to be remade.

20. The starting point is whether the claimant meets the requirements of the Immigration Rules.

21. First, she cannot do so because she is not entitled to switch from the status of a visitor to that of a dependent relative. The fact that the claimant chose to come to the UK as a visitor and three months later applied for indefinite leave to remain suggests a disregard for the law. There was no change in circumstances between her arrival and the application. That in itself is an important consideration in the exercise of evaluating the proportionality of removal.

22. Second, Paragraph E-ECDR.2.5 states that the applicant or, if the applicant and their partner are the sponsor's parents or grandparents, the applicant's partner, must be unable, even with the practical and financial help of the sponsor, to obtain the required level of care in the country where they are living, because -

    (a) it is not available and there is no person in that country who can reasonably provide it; or

    (b) it is not affordable.

23. I am not satisfied that the claimant meets the requirements of E-ECDR.2.5. She could clearly continue to rely on the financial help of the sponsor. She has the resources available to her to pay for some care and the family have simply not considered whether this would be available since they have carried out no research. She has a

daughter and several granddaughters in Pakistan, at least some of whom do not live too far away.

24. It is her case that there can be no suitable paid care since the nature of the care required could never be provided by anyone other than a family member. I have some difficulty in accepting this proposition. She lived alone for some years following the death of her husband in Pakistan and she owns land in Pakistan and has a house there. She was provided with care by her daughter and granddaughter. Whilst her daughter has other caring responsibilities it is likely, on balance, that she could continue to provide some kind of supervision for paid care. Moreover, that daughter appears to have a number of daughters herself.

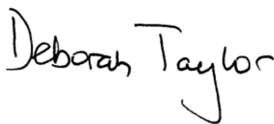
25. Like the Immigration Judge I accept that the claimant would much prefer to have her personal care provided by the family and this ought to be given some weight. Against that, however, are the substantial public interest considerations set out in Section 117B(1), (2) and (3) of the 2002 Act.

26. I do not accept that there would be insurmountable obstacles to her return. The claimant lived for nearly 80 years in Pakistan and has close relatives a short drive away from her home. She has the resources to buy in care which she needs and which could be supervised by her daughter and/or granddaughters.

Decision

The original judge erred in law. Her decision is set aside. It is remade as follows. The Secretary of State's appeal against the decision to refuse her indefinite leave to remain is dismissed.

No anonymity direction is made.



Signed Date 14 July 2018

Deputy Upper Tribunal Judge Taylor