Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/11404/2015**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 17th January 2018	**On 12th February 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE J G MACDONALD

Between

MR MUHAMMAD ZIA-UD-DIN KHAN
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Palmer, Counsel, instructed by Barnes Harrild & Dyer Solicitors
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a national of Pakistan who is now 77 years of age and he appealed under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 against the decision of the Secretary of State to refuse his application for settlement outside the Immigration Rules.

2. His appeal was heard by Judges of the First-tier Tribunal Judges Froom and Siddall who in a lengthy document dismissed the appeal on human rights grounds in a decision promulgated on 20th February 2017.

3. It is useful to set out some of the judges' findings. The Appellant is a retired tax inspector and two of his sons reside here and are British citizens. Since arriving as a visitor in April 2015 he has been residing with his youngest son and his wife and their three children. His oldest son lives nearby with his wife and five children. He has significant physical problems all of which are set out in the decision. He was undecided about whether to have surgery on his knees.

4. There was a report from a Dr Dhumad a Consultant Psychiatrist in terms of the Appellant's mental health but his findings, namely that the Appellant had a significant risk of committing suicide, were not accepted by the Tribunal and there is no challenge to the Upper Tribunal to the reasons given by the two First-tier Tribunal Judges on that point.

5. The Tribunal accepted that the Appellant enjoyed emotional support from his family members and also that he felt unhappy at the prospect of returning to Pakistan. He would much rather spend the rest of his life here. The situation he now faces would inevitably cause anxiety and the Tribunal said they "fully" recognised that the pain and disability caused by his knee condition would cause him to feel low (paragraph 29 of the decision). The Tribunal also accepted that the Appellant required and recently acquired some help to look after himself and accepted Ms Khan's evidence about the care she provides for her father-in-law. They found that the evidence of Mr Muhammad Khan that his father required nursing from a qualified nurse to be an exaggeration (paragraph 31).

6. The Tribunal went on to consider what the position would be if the Appellant did return to Pakistan and referred to the possible application for entry clearance (paragraph 33). They concluded that the Appellant still owned a property in Sialkot in which he could live because he could obtain vacant possession of all or part of the house.

7. The Tribunal referred to the cost of the care assistance in Pakistan and had no hesitation in saying that the family would do their utmost to assist their father (paragraph 42). With reference to the incomes available they noted the sums in paragraph 43 saying that there was a Santander current account with a balance consistently well over £50,000.

8. In paragraph 47 they said that upheavals were difficult for older people and having relocated only two years ago it would undoubtedly be extremely unsettling for the Appellant to have to return now. They said "we are very conscious of that fact".

9. For reasons given they found there were no compelling circumstances in this case referring to various jurisprudence. They considered the terms of Section 117B of the 2007 Act and referred again to the possibility of the Appellant making an application from outside the UK (paragraph 62).

10. In the final paragraph of their decision they said they had much sympathy for the Appellant and his family but removal would be a proportionate step and there would be no breach of Article 8.

11. Grounds of application were lodged. Reference is made to the factual background which is not really a matter of dispute. The grounds set out the summary of the Tribunal's conclusions and go on to identify possible errors in law. In Ground 1 it is said it was necessary to consider the Rules relating to the adult dependent relatives as the government's published position on the public interest behind them unambiguously declared it to be centred on the economic wellbeing of the United Kingdom. The Appellant could show highly compelling family circumstances and removal would plainly be unjustified. Reference was made to **Ruppiah v SSHD [2016] EWCA Civ 803** which was authority for the proposition that a Tribunal cannot apply Section 117B rigidly so as to produce a result which offended against Article 8 ECHR. This was a case where the accepted evidence was that there had been no recourse to any public funds or NHS treatment whatsoever. There was therefore no economic wellbeing public interest element which could rationally justify the Appellant's removal. The second Ground of Appeal was that the Tribunal had found that suitable care was available to the Appellant in Pakistan by employing the services of a domestic helper and was affordable. This was unsustainable in light of the evidence which included details of the Appellant having to rely upon his male members to assist in dressing and washing him. He would be bereft of family support and be highly vulnerable. Permission to appeal was respectfully sought and the Upper Tribunal invited to set aside the Tribunal's decision and to retain the appeal to determine matters of law raised in the submissions.

12. As it transpired the application for permission to appeal was made slightly late but there is no need to go into that any further as Ms Everett indicated she was not objecting to the matter being admitted and heard before me.

13. Permission to appeal was initially refused by First-tier Tribunal Judge Frankish but granted by Upper Tribunal Judge Gleeson (who did not deal with the issue of whether the appeal was in time) but noted that the Appellant challenged the decision on the basis that it was contrary to jurisprudence and it was said that the Grounds of Appeal were arguable.

14. The Secretary of State lodged a Rule 24 notice saying that the judges had properly considered the Appellant's circumstances. The findings in respect of the Appellant's medical conditions were set out at paragraphs 19 to 30 and the judges had found that the Appellant had a house in Pakistan and his care could be provided by a domestic helper. There was also evidence that there were ample funds to support the Appellant. The Tribunal has had regard to the Appellant's mental health and it was noted in paragraph 60 the bond that he had with his family in the UK. The Tribunal had properly considered the arguments of the Appellant's Counsel at the hearing and had regard to case law.

15. Before me Mr Palmer relied on his grounds. This was a case where an Appellant, if removed, would be miserable and prone to depression. It was an appeal outside the

Rules and compelling circumstances had been shown. He could not rely on his family in Pakistan. He would be on his own. The decision was not proportionate. In terms of the points taken by Ms Everett he said that this was not a case being assessed under the Immigration Rules. As such it was not a case where great weight should be given to the provision of those Rules. Reference was made to the skeleton argument at point 3.2 where it was said that the Secretary of State's "statement of intent" which preceded the coming into force of Appendix FM stated that the Rules relating to adult dependent relatives were that they would only be able to settle in the UK if they can demonstrate that they required a level of long-term personal care that could only be provided in the UK by their relative here and without recourse to public funds. The matter came down to the **Razgar** point of whether or not it was proportionate to remove the Appellant. There was no public interest element in removing him to Pakistan. I was invited to set the decision aside and to remit the appeal to the First-tier Tribunal or alternatively retain the appeal in the Upper Tribunal.

16. For the Home Office Ms Everett relied on the Rule 24 notice. The judges had clearly noted the Appellant's emotional needs – see paragraphs 29 and 30 of the decision. They had accepted that the Appellant received and reasonably required help to look after himself. In terms of paragraphs 62 and 63 of the decision they had considered that the harshness of the decision was ameliorated by the possibility of making an application from outside the UK – there was nothing unreasonable in those findings. They had given weight to the Secretary of State's Rules which did not cover every single case but they were correct to attach weight to whether the Rules are met.

17. I was asked to conclude that there was no material error in law.

18. I reserved my decision.

Conclusions

19. My task is to ascertain whether there is an error in law by the judges in concluding, as they did, there would no breach of the Appellant's qualified but fundamental rights under Article 8 if he was returned to Pakistan. In my view there is no doubt this is one of those difficult cases where other judges might have reached a different decision but that is in no way the test which has to be applied on whether or not the judges erred in law.

20. It is not disputed that the Tribunal were entitled and in my view correct to conclude that the evidence of the Consultant Psychiatrist Dr Dhumad could not be relied on when he said that the Appellant was suffering from severe depression and presented as a suicide risk. The evidence does not justify such a conclusion and there was no dispute about that.

21. In terms of whether the Tribunal applied the correct test in determining the issue of public interest and proportionality it seems to me that the Tribunal were very aware of the vulnerability of the Appellant in returning to Pakistan and being absent from his family. In particular in paragraph 29 they said that the situation he now faced would inevitably cause anxiety. They fully recognised that the pain and disability

caused by his new condition would cause him to feel low. They said he may be experiencing some symptoms of depression but these were evidently mild because they did not require treatment. The Appellant had told them that he thought his depression had gone. They also accepted (paragraph 30) that he received and reasonably required help to look after himself. They detailed what that help involved. However they did find that Mr Muhammad Khan's evidence that his father required nursing from a qualified nurse to be an exaggeration. His wife was not a qualified nurse.

22. They went on to consider the available suitable care for the Appellant in Pakistan. They were entitled to, indeed bound to, take into account the financial position of the Appellant's family in this country and they did so at paragraphs 41 to 44 inclusive.

23. They said they were "very conscious" of the fact that it would undoubtedly be extremely unsettling for the Appellant to have to return to Pakistan. For reasons given in paragraph 49 they had little difficulty in finding there were compelling circumstances justifying an assessment of Article 8 and found that there were no compelling circumstances to grant the appeal. They correctly approached the evaluation of Article 8 by reference to the five questions to be asked in **Razgar [2004] UKHL 27**. They referred to **Britcits R (on the application of) v SSHD [2016] EWHC 956 (Admin)** and **MM (Lebanon) v SSHD [2015] 1 WLR 1073**. They correctly found that removing the Appellant would amount to significant interference with his family life (paragraph 53).

24. They set out the points for and against the Appellant with reference to well-established case law and noted in paragraph 61 that when it came down to finding where the proportionality balance took place they felt compelled to find it fell on the public interest side of the scales due to the weight which must be given to it. They were correct to say that Parliament had decided that adult dependent relatives cannot "switch" in the UK and even to obtain admission on this basis they had to demonstrate they met certain requirements of Appendix FM and specified evidence rules found in Appendix FM-SE. They were right to consider whether the harshness of decision was ameliorated by the possibility of the Appellant making an application from outside the UK. They referred to and applied well-known case law.

25. They also noted the ability of the family to visit the Appellant in Pakistan as they did in 2015.

26. They had much sympathy for the Appellant and his family but concluded that the correct application of the law to the facts delivered the conclusion that the decision to remove the Appellant was a proportionate step.

27. It can be repeated that the Appellant is a highly vulnerable witness and one must have considerable sympathy for him and his family. Nevertheless the question before me is whether or not the Judges of the First-tier Tribunal erred in law. In my view their reasoning is clear and coherent and there is no material or indeed any error in law which would justify the decision being set aside.

28. Ii follows that the decision must stand.

Notice of Decision

29. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

30. I do not set aside the decision.

31. No anonymity order is made.

Signed *JG Macdonald* Date 8th February 2018

Deputy Upper Tribunal Judge J G Macdonald

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed *JG Macdonald* Date 8th February 2018

Deputy Upper Tribunal Judge J G Macdonald