



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

Appeal Number: HU/01336/2016
HU/01342/2016, HU/01344/2016
HU/01348/2016, HU/01351/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 14 December 2018**

**Decision & Reasons
Promulgated
On 8 January 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE APPEYARD

Between

R U G First Named Appellant

And

S R Second Named Appellant

And

W R Third Named Appellant

And

Y F Fourth Named Appellant

And

Y F Fifth Named Appellant
(ANONYMITY DIRECTION MADE)

And

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr E Fripp, Counsel.

For the Respondent: Ms S Cunha, Home Office Presenting Officer.

DECISION AND REASONS

1. The first and second Appellants are the parents of the third, fourth and fifth Appellants. They made an application for leave to remain in the United Kingdom on Article 8 grounds alone. It was refused and they appealed. Following a hearing, and in a decision promulgated on 17 April 2018, Judge of the First-tier Tribunal Cassel dismissed their appeal. It was acknowledged at paragraph 10 of the Judge's decision that the sole issue for consideration was based upon the medical condition of the fifth Appellant. Before me today it was extended to include, given that medical condition, whether or not her needs could be met in Pakistan.
2. The Appellants sought permission to appeal which was initially refused. However, a renewed application was granted on 5 November 2018 by Judge of the Upper Tribunal Grubb. His reasons for so granting were: -
 - “1. A1 and A2 are married. A3, A4 and A5 are their children. The First-tier Tribunal (Judge Cassel) dismissed the appellants' appeals against the refusals of leave based on Article 8 of the ECHR.
 2. On the basis of the grounds, it is arguable that the Judge failed to give proper weight to the expert medical reports concerning A5's health and availability of treatment in Pakistan.
 3. Consequently, Grounds 1 and 2 are arguable. Grounds 3 and 4 have less merit but I would not exclude consideration of them. Permission to appeal is granted.”
3. Thus, the appeal came before me today.
4. At the outset of the hearing medical evidence forwarded to the Tribunal by the Appellant's representatives in a letter of 3 April 2018 was shared between both parties.
5. Mr Fripp reminded me of the basic facts of this appeal which turned upon the health of the fifth Appellant. She was born in the United Kingdom prematurely and suffers from multiple debilitating problems including a hole in the heart.
6. Within the evidence before Judge Cassel was the medical evidence referred to above alongside an affidavit from the first Appellant's brother. The medical evidence comprises of a report dated 25 March 2018 on the fifth Appellant prepared by Dr Imdad Ali MBBS, DCH, MRCPI, FRCPI, FRCPCH, Consultant Paediatrician at the Newham University Hospital. It sets out the fifth Appellant's problems, medications, background history and states that Dr Ali believes that the fifth Appellant's “long term need

cannot be provided in Pakistan, even in big cities. YF's need can be categorised as complex need which can only be provided in well-established multidisciplinary team effort, which cannot be provided in Pakistan.”.

7. Dr Yasmeen Memon's report is dated 31 March 2018 and indicates that having reviewed the evidence of Dr Ali she agrees that the provision the fifth Appellant needs cannot be provided in either Hyderabad or any big city in Pakistan. Dr Saleem Shaikh in a report of 2 April 2018 also comments upon Dr Ali's report from the United Kingdom and stated that it is not possible to provide the required long term medical care in support to the fifth Appellant as in Pakistan there is neither the required medical resources nor the multidisciplinary teams available even in the big cities to treat her complicated medical condition which could deteriorate at any given time.
8. Mr Fripp highlighted the medical evidence indicating that there had been no opposition by the Respondent to either its admission or reliability. The genuine nature of the evidence or authenticity had not been challenged. He contended that the Judge has failed adequately to deal with this medical evidence. There is no detailed analysis of the fifth Appellant's health, the medication she is receiving or her consequent needs. The Judge has erroneously attached no weight to the evidence of Dr Ali on the basis that he has not set out his own knowledge of the health system in Pakistan. This, Mr Fripp accepted, was reasonable but the Judge's approach to the evidence of Drs Memon and Shaikh is flawed. There was never any suggestion by the Presenting Officer at the First-tier Tribunal hearing that this evidence was anything other than authentic. The Judge's criticisms of the evidence are flawed, weight should have been given to this evidence.
9. Mr Fripp accepted that in the grant of permission to appeal little endorsement had been given to grounds 3 and 4 and he did not pursue them.
10. Ms Cunha urged me to accept that overall there was no error of law and that any such error that had been highlighted by Mr Fripp was immaterial. There was no challenge at the First-tier Tribunal hearing to the medical evidence albeit she asserted that it had been submitted that it was self-serving and that there was no credible evidence that the fifth Appellant's needs could not be met in Pakistan. Even if the Judge had provided inadequate reasoning as to why he did not consider the medical reports adequate, it did not amount to a material error given his overall assessment.
11. I reject Ms Cunha's submissions. She accepts, and I find in accordance with the submissions of Mr Fripp that the Judge has inadequately reasoned his consideration of the three medical reports referred to earlier in this decision. This has resulted in his finding at paragraph 31 of his decision

that the medical needs of the fifth Appellant are not exceptional and can be met without apparent difficulty. In light of the evidence it is plain that in coming to this decision the Judge has failed to give proper weight to the medical reports concerning the fifth Appellant's health and the availability of treatment in Pakistan. In so doing he has materially erred.

12. Mr Fripp reminded me of a decision taken earlier this week where a refusal was made of an adjournment application for today's hearings consequent upon the fifth Appellant having a medical appointment today and her mother, the second Appellant, consequently being unavailable to attend today's hearings. In refusing the adjournment the decision was taken to limit today's hearings to the finding only of whether or not there had been an error of law in the decision of the First-tier Tribunal Judge.
13. Mr Fripp urged me to accept that the totality of the Appellants' claims had not been fully considered and in the circumstances invited me to remit the appeal.
14. Looking at the position today that is a submission I accept.

Notice of Decision

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law. The decision is set aside. The appeal is remitted to the First-tier Tribunal to be dealt with afresh pursuant to Section 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 and Practice Direction 7(b) before any Judge aside from Judge Cassel and Judge C M Phillips.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed
2019

Date: 7 January

Deputy Upper Tribunal Judge Appleyard