



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

Appeal Number: HU/04785/2016

THE IMMIGRATION ACTS

**Heard at Bradford
On 11 March 2019**

**Decision & Reasons Promulgated
On 18 March 2019**

Before

UPPER TRIBUNAL JUDGE LANE

Between

**ABDUL MAJID
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Chaudhry, instructed by AK Action Bureau

For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. By a decision promulgated on 7 September 2018, I found that the First-tier Tribunal had erred in law and I set aside its decision. My reasons were as follows:

"1. The appellant, Abdul Majid, was born on 13 July 1942 and is a male citizen of Pakistan. He applied for entry clearance as an adult dependent relative seeking to join a sponsor in the United Kingdom. His application was refused by a decision of the Entry Clearance Officer (Sheffield) dated 1 February 2016. The appellant appealed to the First-tier Tribunal (Judge T Jones) which, in a decision promulgated on 21 August 2017, dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The appeal proceeded on Article 8 ECHR grounds only. The appellant complains that the judge failed to consider Article 8 adequately. Judge Jones concluded that the decision not to issue entry clearance to the appellant was proportionate.

3. I find that the decision should be set aside. I reach that decision for the following reasons. As Judge Parker noted in her grant of permission to appeal (28 December 2017), Judge Jones's consideration of the appellant's ability to meet the requirements of Appendix FM of HC 395 (as amended) is unimpeachable. The appellant did not meet the requirements of the relevant Immigration Rules. However, I agree with Judge Parker's observation that, having decided to proceed to consider Article 8 at all, it must follow that the judge had identified circumstances which justified such a consideration. However, the judge's reasons for finding that the decision was not disproportionate [27] turns the argument back on itself again by simply setting out the reasons why the appellant could not meet Appendix FM. Had the appellant met the requirements of Appendix FM, there would have been a strong argument for allowing his appeal on Article 8 grounds. Having not met those requirements, it would have been open to Judge Jones to have observed that there was no evidence of compelling circumstances or, alternatively, to have given reasons for proceeding with an Article 8 analysis and then dismissing the Article 8 appeal, again with reasons. Instead, he has delivered a circular argument which leaves a reader of his decision unclear as to why the Article 8 appeal was dismissed.

4. In the circumstances, I set aside Judge Jones's decision. His findings of fact in relation to the ability of the appellant to meet the requirements of Appendix FM are preserved. The Tribunal will remake the decision following a resumed hearing on a date to be fixed in Bradford (before Upper Tribunal Judge Lane). Both parties may adduce further evidence. If they do so, they must send to the other party and to the Upper Tribunal copies of any written evidence upon which they may respectfully seek to rely no later than 10 days prior to the resumed hearing.

Notice of Decision

The decision of the First-tier Tribunal promulgated on 21 August 2017 is set aside. The judge's findings regarding Appendix FM shall stand. The Upper Tribunal (Upper Tribunal Judge Lane) will remake the decision following a resumed hearing on a date to be fixed at Bradford (two hours).

No anonymity direction is made."

2. At the resumed hearing at Bradford on 11 March 2019, I heard evidence from two of the appellant's sons, Mr [MM] and Mr [RM]. They each gave an account of the arrangements that have existed in recent years by which they and their brothers (there are five sons in all) have taken it in turns to travel to Pakistan to look after the appellant. I find that the evidence which I heard was truthful although I do find that both witnesses have played down the financial impact which these arrangements have had upon their families and those of their siblings. The visits have been for several weeks at a time and resulted in the case of Mr [RM] in the loss of

his job. The evidence which both brothers gave regarding their financial circumstances indicated that they each maintain a family home, a mortgage and a family on very limited income. I accept that the brothers will help each other out but I find that that is not an arrangement which can be sustained into the long-term. I also find that, although savings in airfares and loss of employment income would be achieved if the appellant moved from Pakistan to the United Kingdom, the finances of the sponsoring brothers, even when considered collectively, are such that the appellant is more likely than not to have to rely on public funds should he come to live in this jurisdiction.

3. I preserved the First-tier Tribunal's finding that the appellant was unable to meet the requirements of Appendix FM of HC 395 (as amended). I criticised the First-tier Tribunal judge for failing to explain in greater detail why the Article 8 ECHR appeal had failed. The appellant should be aware that Appendix FM is intended to be, in effect, a codification of the law relating to Article 8 ECHR. If an applicant fails to meet the requirements of Appendix FM then his or her chances of establishing a right to enter or remain in the United Kingdom under Article 8 ECHR outside the rules are slim. This is because, unlike some other provisions of the Immigration Rules, Appendix FM is intended to address most of the circumstances which arise in immigration applications and appeals which relate to family life.
4. One of the reasons why the appellant failed to satisfy Appendix FM was that he could not show that the required level of care in Pakistan was not available or that there was no person in that country you could reasonably provide it or that it was unaffordable. The burden of proof in immigration appeal rests on the appellant and I found that the First-tier Tribunal was right to conclude that no evidence had been provided to prove that other individuals or agencies could not provide the care which the appellant requires. Like Judge Jones, I have no difficulty accepting that the appellant is in poor health and needs help. I also do not doubt that the sponsoring brothers in the United Kingdom feel a personal, social and cultural obligation to provide that help to him. However, the failure of the appellant to show that he cannot access the help he requires within Pakistan is not only determinative of his application under Appendix FM but also the appeal on Article 8 ECHR grounds. The appellant is outside United Kingdom so the decision to deny him entry clearance has no effect upon his circumstances. The impact which it has upon his private and family life has to be set against the public interest which in this instance is enhanced by my finding that the appellant would have to rely upon public funds. I have no doubt that the current care arrangements take a heavy toll on the appellant's sons but I find, weighing that impact against the public interest concerned with denying the appellant entry clearance, that the Entry Clearance Officer's decision is proportionate.

Notice of Decision

5. This appeal is dismissed.

Signed

Date 13 March 2019

Upper Tribunal Judge Lane