Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/05199/2019**

THE IMMIGRATION ACTS

Heard at Manchester	**Decision & Reasons Promulgated**
On 10 December 2019	**On 20 December 2019**

Before

DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL

Between

MR MUHAMMAD AKBAR ALI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Karnik, Counsel, instructed by Sabz Solicitors LLP
For the Respondent: Mr A Tan, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a citizen of Pakistan, challenges the decision of Judge Holt of the First-tier Tribunal sent on 28 July 2019 dismissing his appeal against the decision of the respondent made on 21 November 2018 based on private and family life.

2. In the refusal decision letter the respondent concluded that the appellant could not meet the requirements of the Immigration Rules although it was accepted that by virtue of his relationship with a British citizen spouse, he met the eligibility requirements (see paragraph 9) of Section E-LTRP of Appendix FM. The respondent accepted that his partner is suffering from a number of medical conditions, including recurrent depressive disorder, chronic pain, vomiting and headaches and that she also has previously

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suffered from (breast) cancer. The respondent concluded nevertheless that despite statements provided stating how he cared for his wife by doing house chores, grocery shopping and taking his wife to medical appointments, etc., she could obtain alternative care provisions if she chose to remain in the UK. Earlier the respondent had stated that as his wife had previously resided in Pakistan she will have retained knowledge of life both socially and culturally in Pakistan and it was reasonable to expect her to accompany him to Pakistan.

3. At the hearing before the judge there was no appearance on behalf of the respondent. The judge heard evidence from the appellant. The judge's ROP indicates that the questioning was very short. The appellant's wife attended in a wheelchair "looking very frail".

4. In his decision the judge spent considerable time questioning whether the appellant's claim to be a carer for his wife was genuine, observing that the medical letters describing him as a carer appeared to be based on information given by the sponsor. At paragraphs 17 and 18, the judge stated:

> "17. What is striking in this case is that there is no evidence whatsoever of a personal relationship between the parties other than the claim that the appellant is, in effect, the sponsor's carer. The totality of the evidence in the witness statements, the oral evidence and documents provide no scrap of anything other than the uncorroborated evidence of appellant allegedly caring for the sponsor. The only evidence of his being her carer is on the basis of assertions made by the appellant and sponsor in relation to information that they have given to doctors and, apparently, benefits agencies. I have been provided with a few select letters from the sponsor's medical records where the appellant attended medical appointments with the sponsor. I find that this is self-serving evidence. Against this background, it is strange that the appellant left the UK and went to Saudi Arabia within about a month of arriving in the UK and that he was out of the UK for about 7 weeks in March/April 2016. If she was as ill, disabled and depressed as the medical records indicate, then this would simply have not been viable.
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> 18. I am wary of speculating and state that I am unsure what is actually going on here between the appellant and the sponsor. However, I am not remotely satisfied that the sponsor is reliant on the appellant as claimed. There was no evidence regarding how this profoundly depressed, disabled and thus very vulnerable sponsor coped with the prolonged absences of the appellant abroad. It is regrettable that the respondent made errors in the refusal letter and also failed to attend the hearing to cross-examine the appellant and sponsor and to make submissions."

5. At paragraph 19 the judge also concluded that there was "no evidence whatsoever to explain why they cannot live together in Pakistan although it is implied that life there would be more challenging as there are less

facilities for disabled people and the sponsor would inevitably lose her state benefits. I am quite sure there are Pakistan citizens who use wheelchairs". The judge stated that "she seems able to live independently at home, albeit reliant on medication ...".

6. The appellant's grounds are discursively composed but submit in essence that:

   (1) the judge failed to grapple with the issue of whether the appellant had valid leave when he applied for leave to remain on 31 August 2017;

   (2) failed to give proper consideration to whether it was reasonable to expect the appellant's spouse to accompany him to Pakistan despite her medical circumstances;

   (3) wrongly went behind the respondent's acceptance that the appellant met the eligibility requirements as a partner; and

   (4) wrongly attached negative weight to the appellant's absences abroad for short periods of time in the context of assessing whether he was in fact acting as his spouse's carer.

7. I did not take submissions from the parties as both representatives were in agreement with my provisional indication that the judge's decision should be set aside.

8. I am persuaded that the judge materially erred in law. There are two main errors. First of all, the judge based his assessment of the appellant's Article 8 circumstances on his findings that the appellant and his partner did not have a genuine and subsisting relationship. That was not something disputed by the respondent in the refusal decision and, whilst in principle it is open to a judge to go behind concessions of fact made by the respondent, if he does so, a judge must ensure that the proceedings are conducted fairly, giving the appellant and witnesses proper opportunity to address the newly perceived issues. Palpably the judge failed to take such precautions. As already noted, the ROP records very minimal questioning, none of which put the appellant on notice that the genuine nature of his relationship was now at issue.

9. Second, the judge wholly failed to address the appellant's contentions that he did qualify under the Rules under the suitability requirements because (on his argument) he was not an overstayer. The judge wholly disregarded this point and failed when assessing the case both under the Rules and outside the Rules, to make a ruling on it, despite it being specifically raised in paragraphs 7-8 of the appellant's grounds of appeal.

10. For the above reasons the judge materially erred in law. I set aside the judge's decision and preserve no findings made in it.

11. In the circumstances of this case, I see no alternative to the case being remitted to the FtT for a full re-hearing.

12. I pointed out to Mr Karnik and Mr Tan that although the judge's decision has been set aside and no findings preserved, the appellant must be understood to now be put on notice by the judge's decision that there is a live issue as to the genuine and subsisting nature of his relationship with his spouse. Whilst I make no specific directions (because it may be the respondent will maintain the same approach to that taken in the refusal decision as regards the eligibility requirements), the appellant's representatives should give careful consideration to obtaining an independent report on whether the appellant is in fact a primary carer of his spouse and whether she in fact needs his specific care. How she managed when he went out of the UK previously will be one obvious question needing exploration.

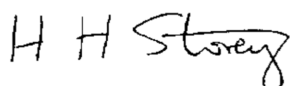
13. To conclude:

    The decision of the judge is set aside for material error of law;

    The case is remitted to the FtT (not before Judge Holt).

No anonymity direction is made.

Signed



Date: 17 December 2019

Dr H H Storey
Judge of the Upper Tribunal