Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/07394/2018**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 1 July 2019	**On 16 July 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE JORDAN

Between

MR ARSLAN AHMED
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms K. McCarthy, Counsel instructed by Sunrise Solicitors
For the Respondent: Mr E. Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is the appeal of Arslan Ahmed. He is a Pakistani citizen who was born on 4 March 1978 and is now aged 41.

2. He appeals against the determination of First-tier Tribunal Judge Roots whose determination was promulgated on 18 December 2018 in which he dismissed the appeal of the appellant. It is accepted that there is one issue only in this appeal and that is whether there were obstacles which are sufficiently serious to prevent the appellant's wife, Ms Islam, who was born on 18 January 1983, from relocating with her husband to Pakistan.

3. The appeal before me now is the re-making of the decision following the decision I made on 26 April 2019 that there was an error of law in the

findings that were made by the First-tier Tribunal Judge. I can do no better than annex the reasons for finding an error of law to this determination because it sets out the background. In paragraph 1, I set out that Ms Islam was diagnosed with kidney failure in 2001 and received a kidney transplant in 2002. That is now some seventeen years ago. Due to the transplant she has been taking strong immunosuppressive medication and has not been generally well since the transplant. She is able to do very little physical activity for herself.

4. There were various reports which I need not set out here. All I need say is that when the judge came to make his decision he said:

> I accept that Ms Islam will have some significant difficulties if relocated to Pakistan but do not accept that they have shown that healthcare will not be available and do not accept that the significant difficulties will amount to insurmountable obstacles.

5. I found that sentence troubling because it appears to draw a distinction between *significant difficulties* and the *very significant difficulties* which are the hallmark of insurmountable obstacles. I found that the judge had failed to take properly into account the material evidence from Dr Rumjon and the continuing need for surveillance in the United Kingdom as a result of the transplant.

6. I was not, however, prepared at that stage to re-make the decision. Although I knew that Ms Islam was subject to four-monthly check-ups, I was not specifically told what the consequences would be, were she to return to Pakistan. It was for this reason that I suggested that further medical evidence be provided.

7. This has now been done. It takes the form of a report from Dr Rumjon dated 3 May 2019 in which he sets out the history and deals with the future prospects for Ms Islam.

8. He states on page 2 of his report that the risk of recurrence of the ANCA vasculitis affecting her transplant in the same fashion as it affected her native kidneys was low. In other words what occurred requiring her transplant in 2002 was not likely to recur at a later stage. It was however difficult to predict the life expectancy of her transplant; that the graft would be at risk if she developed any serious medical problems even if not directly related to her kidney, such as an infection or cancer.

9. The report of Dr Rumjon continues:

> As the function of a kidney transplant starts to decline…plans are made to either begin haemodialysis or prepare patients to receive another transplant. In Ms Islam's case it is anticipated that she would be sufficiently physically robust enough to be considered for re-transplantation in the first instance but patients receiving a second kidney transplant require more complex investigations as their immune systems have been modulated by the presence of the first transplant. Kidney transplant function is associated with an increased risk of death as the need for dialysis approaches and the highest quality evidence shows that immediate repeat transplantation offers

the best survival outcomes and quality of life compared to re-transplantation after a period of haemodialysis even if this is short.

Furthermore, by any measurable outcome survival and quality of life with a kidney transplant is far superior to that seen in patients who are on haemodialysis. The provision of haemodialysis in Pakistan is poor. There are only about 150 nephrologists serving a population of about 195,000,000 people and only an estimated 5 to 15% of patients who need haemodialysis are able to obtain it.

The provision of renal care in Pakistan was examined in great detail by a report commissioned by the International Society of Nephrology. Transplantation activity fell woefully short of demand with inadequate financial support and a lack of an organised deceased donor programme being major stumbling blocks. Deceased donors were poorly utilised because of an ineffective organ procurement network. Organ trafficking remains an endemic problem and a report following 36 European patients who travelled to Pakistan to obtain kidney transplant revealed that seven patients died while sixteen patients developed wound infections. Only 80% of the patients with transplanted kidneys survived to one year post transplant compared to a rate of 98% in the United Kingdom.

The available data suggests that if Ms Islam relocated to Pakistan she would not have access to the same level of care for her current kidney transplant. However this would be dwarfed by the issues that would confront her when her current kidney transplant eventually fails. She will not have ready access to life-saving haemodialysis and even if she were able to find a unit that would be able to provide her with this treatment, it is an inferior treatment to a second transplant.

However even if she were to receive a kidney transplant, the provision of transplantation in Pakistan is currently poor in comparison to that provided in the United Kingdom. I believe that if she were relocated to Pakistan there will be an extremely high likelihood that her life expectancy would be significantly shortened.

10. My function in remaking this decision is to consider whether the problems faced by Ms Islam amount to very significant difficulties. Were that to be the case, this would inevitably result in a conclusion that there were *insurmountable obstacles*. I am wholly satisfied that, as a result of the evidence before me, there would indeed be very significant difficulties for Ms Islam were she to accompany her husband to Pakistan. This are graphically illustrated in Dr Rumjon's latest report. In such circumstances, I am satisfied that the appellant meets the requirements for leave to remain in the United Kingdom.

11. Accordingly, I re-make the decision allowing Mr Ahmed's appeal against the decision of the Secretary of State to refuse him further leave to remain.

NOTICE OF DECISION

(i) The appellant's appeal is allowed.

(ii) I re-make the decision allowing the appellant's application for further leave to remain.

ANDREW JORDAN
DEPUTY JUDGE OF THE UPPER TRIBUNAL
Date: 11 July 2019

APPENDIX

REASONS FOR FINDING AN ERROR OF LAW

(with paragraphs re-numbered)

1. The appellant is a citizen of Pakistan who appeals against the determination of First-tier Tribunal Judge Roots following a hearing that took place on 21 November 2018. The issue before the judge covered a number of grounds but, for the purposes of the appeal to the Upper Tribunal, the issue has been confined to a single argument in relation to whether or not the evidence was properly managed by the judge in the determination in relation to the sole issue before me, namely whether the appellant's partner, Miss Islam, would face very significant difficulties in continuing their family life together outside the United Kingdom which could not be overcome or would entail very serious hardship for the partner. That is the definition of insurmountable obstacles and it is the evidence in support of that allegation which is material to my consideration. There were before the judge two material pieces of evidence. There was a letter from the Morecambe surgery in which the situation is described in these terms:

> "Miss Islam was diagnosed with kidney failure in 2001 and received a kidney transplant in 2002. Due to the transplant she has been taking strong immunosuppressive medication. Miss Islam has not been generally well since her transplant and is able to do very little physical activity for herself. When she was residing in Manchester her family were mainly involved in looking after her needs. Miss Islam was able to do very little physical activity for herself and she tended to stay inside the house. She then married and moved to London and has been registered with us since 2014. Unfortunately she has been gradually deteriorating in terms of her physical ability and finds that she becomes very tired even with walking a very short distance. She now uses a walking aid to help give her support when she is outdoors. She does not leave the house unless she is with someone for support."

2. The GP's letter was augmented by a letter from the Royal Free Renal Transplant Clinic and from Dr Adam Rumjon the consultant nephrologist. His report is found at pages 27 to 28 and it is dated after a clinic appointment on 24 July 2018. The material part of the letter is that it shows that Miss Islam who was born on 18 January 1983 was 16 at the time she was diagnosed with a rare disease called ANCA-associated vasculitis. She was then 16. She received haemodialysis initially but was switched to peritoneal dialysis following a series of line infections. She was 35 years old at the date the letter was written and has been a renal patient for the best part of twenty years. The doctor refers to the kidney transplant in 2002 and that her renal function had been stable over this time with a baseline creatinine of 110. There then developed in 2016 some toxicity and her immune-suppression regime was switched to Azathioprine. It is a feature of Miss Islam's condition that she continues to

be under the care of the renal transplant clinic at the Royal Free notwithstanding the twenty years that have elapsed since her transplant.

3. The material words in the report relied upon by Ms McCarthy on behalf of the appellant are these:

> "From my point of view she is a renal transplant patient with moderate function and our general standard of care includes appointments to review transplant function at least on a four monthly basis. From my perspective I do not advise any of my transplant patients to be out of the country for more than this length of time and the same applies to Miss Islam."

4. The only proper inference that one can draw from this is that there is a risk which has to be met by four monthly visits to the renal transplant clinic and that the risks have evidenced themselves over the years by changes in medication and by constant regular reviews without which there is obviously a problem that might result in serious consequences. The problem is not one of a kidney transplant albeit that this is a transplant that took place many years ago nor is it a problem about dialysis but is a problem about the review that is currently conducted by the Royal Free Hospital with a view to seeing whether there is either a need for a change in medication or for some other form of treatment. It cannot therefore be said that this is just a routine test to see if the patient is continuing to be well. It appears to be a genuine process of examination and adjustment where necessary and it also follows that, were there to be a failure to pick up such a change, then those consequences might be very severe. I entirely accept that the evidence is not as strong as it should be in a case of this type but it seems to me that it clearly suggested that Miss Islam should not be removed from the United Kingdom to Pakistan.

5. There was evidence before me (I am not certain whether it was evidence before the judge) about the Country Policy and Information Note on Pakistan of August 2018 dealing with medical and healthcare issues. A copy was appended to the grounds but the relevant passage reads as follows:

> "This policy addresses kidney disease treatment and organ transplant services (liver transplant) in Pakistan at pages 14 to 15. The only treatment for kidney disease mentioned in the CPIN or in the hyperlinks within it is dialysis. The policy suggests that kidney transplant services are not available at all in Pakistan. The evidence is that a centre for liver transplantations was established with assistance from specialists from the Royal Free Hospital, (Ms Islam's current medical team). This unit then lay dormant for five years due to the absence of qualified staff to perform surgery and support services. There is a hope that Chinese staff may arrive to help the centre to commence work."

6. The current information is in the same Country Information of August 2018. Section 10 deals with kidney diseases:

> "To meet the ground needs of the patients Fatima Memorial Hospital has been providing clinical evaluation of all kinds of kidney diseases and haemodialysis to patients suffering from kidney diseases through its dialysis

> centre operational since 2004. Most of the patients are dialysed twice weekly which takes around eight hours per week and certain dialysis machines have been dedicated exclusively for hepatitis C patients. An average of 7,000 dialysis are done annually at Fatima Memorial Hospital out of which 50% are either free of cost or at subsidised rates. The treatment is expensive thus not affordable by most of the patients and the costs are borne by the hospital directly and through the generosity of philanthropists."

7. The material was not dealt with expressly by the judge in the determination.

8. In his determination, the judge correctly identifies in paragraph 23 the definition of insurmountable obstacles. It should be understood in a practical and realistic sense rather than referring to obstacles which made it literally impossible for the family to live together in the country of origin of the non-national concerned. It then refers to very significant difficulties which could not be overcome or would entail very serious hardship.

9. Miss Islam is a British citizen, she has always lived in the United Kingdom. She has never lived in Pakistan and there is no issue that she is in a continuing relationship with the appellant. The judge found at paragraph 64 the appellant has not produced any persuasive evidence that simply moving to Pakistan will significantly affect her kidney function and consequently he found at paragraph 74, "I accept that Miss Islam will have some significant difficulties if relocated to Pakistan but do not accept that they have shown that healthcare will not be available and do not accept that the significant difficulties will amount to insurmountable obstacles." He therefore appears to draw a distinction between significant difficulties and very significant difficulties. Had he found that there were very significant difficulties he would inevitably have found that these were insurmountable obstacles. It is not clear upon what basis he draws that distinction but, in doing so, he does not deal with the fact that the appellant's partner has for many years since her kidney transplant been in receipt of what must be complicated immune-suppressive drugs and in particular the judge does not seem to have taken into account the fact that the four monthly review which is carried out is not something which is merely a well-care check such as many people have but it is a more active form of consideration of her kidney function. There is no evidence that this level of care is available in Pakistan. Indeed the evidence suggests that the care in Pakistan is directed simply towards dialysis. Whilst the example provided in the country information in relation to liver transplant should not be treated as being the same as the situation in relation to kidney disease, it does suggest that there is a difficulty in running clinics which deal with transplantation cases.

10. In these circumstances I do not consider that the judge properly took account of the significance of the letter from Dr Rumjon and the continuing treatment that she has in the United Kingdom by way of immune-suppressive drugs or the requirement that the condition has to be constantly monitored. I find that there is an error of law and I set aside the determination of the First-tier Tribunal Judge.

11. I am not prepared at this stage to remake the decision on the basis of the material that was before the judge. In my judgment there were shortages in what Dr Rumjon was saying. In particular, he does not make it plain what the consequences would be if these follow-up examinations at four monthly intervals were *not* to take place. Nor is there evidence about the changes that have occurred in the drug regimes or the need for there to be a constant re-evaluation of the immuno-suppressive drugs that the appellant's partner has to receive. There is no evidence about the availability of drugs generally in Pakistan. Were there to be a real risk of the appellant's partner not being provided with an adequate regime of drugs and that this would lead to a deterioration in her health, (a deterioration which is apparently continuing as far as her physical health is concerned), this may amount to very significant difficulties which would entail very serious hardship for her. In these circumstances the medical evidence should be augmented by clearer evidence as to what would be the consequences of her removal to Pakistan. At the moment it is confined to perhaps a precatory wish that the patient should not travel out of the country for more than four months.

12. I direct that the hearing takes place in the Upper Tribunal and it is limited to further medical evidence. That may include the availability of drugs.