**Upper Tribunal**
**(Immigration and Asylum Chamber)** Appeal Number: HU/05617/2020

**THE IMMIGRATION ACTS**

| **Heard remotely at Field House via video (Teams)** | **Decision & Reasons Promulgated** |
|---|---|
| **On 17 September 2021** | **On 03 November 2021** |

**Before**

**UPPER TRIBUNAL JUDGE BLUM**

**Between**

**BIBI HAMEDAAN**
**(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**
For the appellant: Mr A Stedman, counsel, instructed by Lester Dominic Solicitors
For the respondent: Mr T Lindsay, Senior Home Office Presenting Officer

This decision follows a remote hearing in respect of which there has been no objection by the parties. The form of remote hearing was by video (V), the platform was Microsoft Teams. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

**DECISION AND REASONS**

1. This is an appeal against the decision of Judge of the First-tier Tribunal Wyman (the judge) who, in a decision promulgated on 30 March 2021, dismissed the appellant's human rights appeal against the decision of the Secretary of State

for the Home Department ("the respondent" or "SSHD") dated 14 April 2020 refusing the appellant's human rights claim made on 24 October 2019.

**Background**

2. The appellant is a national of Pakistan, born on 1 January 1939. Her husband died in 1985. Her daughter died in 2013. The appellant's son, Mr Muhammed Munir Abid ("the sponsor"), is a 57-year-old naturalised British citizen residing in the UK with his wife and their family. he is her sole remaining immediate family member.

3. Between 2004 and 2016 the appellant entered the United Kingdom pursuant to grants of entry clearance as a visitor. She last entered the United Kingdom on 21 April 2016. She remained in the United Kingdom and became an overstayer.

4. On 13 April 2018 the appellant applied, in the context of a human rights claim, for leave to remain in this country. This application was refused on 3 September 2018 and an appeal against this decision was dismissed by a panel of the First-tier Tribunal on 18 April 2019. The appellant attended the panel hearing but did not give evidence. The sponsor produced a statement and the panel heard oral evidence from him via an Urdu interpreter.

5. In its decision the panel considered a psychiatric report dated 4 June 2018 prepared by Dr Razia Hussain, a Locum Consultant Psychiatrist. The report indicated that the appellant suffered from high blood pressure, arthritis, cardiovascular disease, and depressive illness. Dr Hussein listed a variety of medications taken by the appellant and found that, in his opinion, the appellant was suffering from a mixed anxiety and depressive disorder. Dr Hussain considered that failure to treat the appellant's symptoms with antidepressants and withdrawal of family support was likely to cause a deterioration in her metal health. It was the psychiatrist's opinion that the appellant's separation "… from her son and others, whom she is emotionally attached to, including her grandchildren, may lead her to deteriorate significantly mentally and physically by not taking the appointment and necessary care to maintain her health." The psychiatrist also stated that the appellant was not fit to fly due to her physical health problems and her current state of mind, and that travelling may worsen her symptoms significantly.

6. The panel noted the sponsor's evidence that, prior to the appellant coming to the UK, she was cared for by nurses (one for the day, one at night) arranged and paid for by him. The sponsor indicated that he was dissatisfied with the standard of care provided even after changing nurses. He conceded however that he could employ nurses to look after the appellant although the standard would not be the same as that currently provided by his family in the UK. The sponsor indicated that the appellant was, at that time, taking the antidepressant Fluoxetine prescribed by her doctor in Pakistan. The appellant was said to be in contact with her doctor in Pakistan via Skype.

7. The panel accepted Dr Hussein's risk analysis that the appellant's mental health was likely to deteriorate should she cease to take the necessary care to maintain her health. The panel found however that such care could be provided by nurses in Pakistan, arranged and paid for by the sponsor, as he had previously done. It was acknowledged that such standard of care may not be to the same high standard as that provided by the sponsor and his family, but that such care would nevertheless be sufficient to mitigate the risk to the appellant's health to which Dr Hussein referred should she be separated from her family. Whilst the panel noted that the appellant's separation from her family was likely to have an adverse impact on her levels of anxiety and depression, it found that such impact would be manageable by her continuing to take antidepressants.

8. In respect of the appellant's physical health, the panel noted that there was no evidence before it on this point other than the sponsor's testimony and the references contained in Dr Hussein's report. The panel noted that, in the 3 years that the appellant had resided in the UK, she had not required medical care. The panel noted that she had the same family doctor in Pakistan for the past 20 years, that she had been receiving the benefit of his treatment and assistance prior to coming to the UK and had the benefit of his treatment whilst here via Skype through which he had arranged to send medication to the appellant. The panel found there was no reason why the appellant would not be able to receive the benefit of the same family doctor's treatment upon return to Pakistan.

9. The panel found that Dr Hussein based his assessment that the appellant was unable to travel both on her physical health, in respect of which he had very little direct knowledge, and on her state of mind. The panel were not satisfied, had Dr Hussein based his opinion solely on the appellant state of mind, that he would have come to the same conclusion.

10. In finding that there were no very significant obstacles under paragraph 276ADE(1)(vi) of the Immigration Rules to the appellant's relocation to Pakistan the panel noted she had resided there for 77 years and that although she had some physical problems it was the respondent's uncontested evidence in her decision of 3 April 2018 that medication for such problems was available in Pakistan. The panel noted that the appellant had previously received the benefit of treatment from her doctor in Pakistan and found there was no reason why she would be unable to receive the benefit of his treatment should she return. The panel reiterated its earlier finding that the appellant could return to live in Pakistan with the financial support of the son and the care of nurses arranged and paid by him.

11. In its Article 8 consideration the panel acknowledged that the appellant would enjoy a higher standard of personal care if cared for by her family in the UK, and that separation from her family would also deprive her of the love, affection and care provided by the sponsor and his family, although there was no evidence to suggest that the sponsor and his family could not visit the

appellant in Pakistan. The panel accepted that separation could lead the appellant to experience greater levels of anxiety and depression although it found that this could be treated with antidepressant medication. The panel weighed these factors, together with the greater difficulty that the appellant may encounter in maintaining her relationship with her grandchildren and great-grandchildren, against the public interest considerations in section 117B of the Nationality, Immigration and Asylum Act 2002. The panel found that the appellant could maintain contact with her family through modern methods of communication and they would be able to visit her. The panel found that there was no disproportionate interference with Article 8.

12. The appellant made further representations supported by a medical report dated 15 August 2019 from Dr Salma Burhan (an independent GP), a Social Circumstances Report prepared by Afzal Rashid (an Independent Social Worker (ISW)), and a psychiatric report prepared by Dr Javid Sultan (a Consultant Psychiatrist). The respondent considered the application as a fresh claim but refused the fresh human rights claim.

13. The appellant appealed the respondent's decision pursuant to s.82 of the Nationality, Immigration and Asylum Act 2002.

**The decision of the First-tier Tribunal**

14. The judge had before her a bundle of documents prepared on the appellant's behalf that included, *inter alia*, a witness statement from the sponsor, a supplementary report by Dr Burhan dated 15 February 2021, a supplementary report by Dr Sultan prepared on 7 February 2021 and a letter from Dr Humera Murtaza of the Somerset Medical Centre which was dated 4 February 2021. The judge heard oral evidence from the respondent via video link. The judge noted the evidence from the sponsor that the appellant had been hospitalised under the NHS from 12 February 2021 to 2 March 2021 because she suffered from asthma and had been unable to breath properly, and had been experiencing stomach pains. The sponsor acknowledged that medical treatment was available in Pakistan but that the appellant not only needed medical treatment but also mental and emotional support. The sponsor claimed that the appellant had "very bitter experiences" with her cares in Pakistan. The sponsor acknowledged that the appellant had nieces/nephews in Pakistan but that the family had lost contact with them over many years.

15. In her decision the judge summarised the 2019 reports prepared by Dr Burhan and Dr Sultan and the 2019 report of the ISW, and summarised the information contained in the CPIN 'Pakistan: Medical and healthcare issues', of August 2018. The judge additionally summarised the respondent's policy on adult dependent relatives. Following the hearing the judge received financial documents relating to the sponsor's income including his relatively modest salary and his rental income from a property he owned.

16. In the section of her decision head "Findings and Conclusions" the judge properly noted that the starting point for her assessment was the panel decision dated 18 April 2019. At [87] to [89] the judge stated:

> "The appellant has provided various updated medical evidence, but it is broadly consistent with the evidence previously before the Tribunal.
>
> With respect to the appellant's physical health, there is one significant difference in that previously, the appellant had not required any significant medical treatment in hospital. However, the appellant was recently an inpatient - between 12th February and 2nd March 2021. However, the list of conditions of the appellant all predate her travelling to the United Kingdom in 2016.
>
> With respect to the appellant's mental health, the current psychiatric reports state that she suffers from mixed anxiety and depression for which she was taking antidepressants. The most recent psychiatric reports states that she is not receiving any medical treatment whatsoever but is waiting for referral to a psychiatrist. There does not appear to be any difference regarding the appellant's mental health, but there may be in respect of the appellant's physical health."

17. At [91] and [92] the judge noted the absence of any evidence or detail regarding the "very bitter experiences" referred to by the sponsor in respect of the carers employed to look after the appellant in Pakistan.

18. At [94] the judge stated that she had taken into account "the report" of Dr Burhan and Dr Sultan (no mention was made of the addendum reports) and that she found it "rather surprising" that the appellant was not receiving any treatment in respect of her moderate-severe depression given that she was receiving treatment at the time of the previous hearing. At [94] and [95] the judge acknowledged that the appellant may be anxious about returning to Pakistan given the difference in standard of care available compared to that that could be provided by her family, but the judge found that the sponsor could employ alternative carers and/or start psychiatric treatment. The judge then noted that both the sponsor and his wife were nationals of Pakistan, that they spoke Urdu and were familiar with the culture and way of life in Pakistan. The judge noted that the sponsor was working on a part-time basis and his wife was not working and had no young children to care for and that it was unclear as to why one or both of them could not accompany the appellant back to Pakistan and arrange for appropriate accommodation and nursing/care for her. The judge noted that nursing care would be far cheaper to employ in Pakistan than in the United Kingdom. At [96] the judge noted that the appellant had previously received medical care from her family doctor and that there was no reason as to why she would be unable to continue receiving the benefit of the same treatment.

19. At [100] to [104] the judge considered whether there would be very significant obstacles to the appellant returning to Pakistan. The judge noted that the appellant had lived in Pakistan for approximately 76 years and the sponsor's acknowledgement that the appellant could receive medical care in Pakistan,

and that indeed it was available in Pakistan. The judge noted that the sponsor had previously paid for his mother's treatment and that she had the support of a long-term family doctor. The judge found that very limited medical evidence had been provided concerning the claim that her various conditions had deteriorated since 2013. The judge acknowledged that the appellant spent approximately 2 ½ weeks in hospital between February and March 2021. At [102] the judge stated:

> "The GP report stated that in his opinion the appellant was not fit to travel by aeroplane, but this predates the recent hospitalisation and it is unclear as to whether or not the appellant is currently unfit to travel or not."

20. At [103] the judge found that without any evidence of the problems relating to the nurses previously employed to care for her in Pakistan there were no very significant obstacles to the appellant's integration.

21. The judge dealt with the appellant's Article 8 claim at [105] to [113]. The judge was satisfied that the appellant's removal would interfere with her right to a private and family life to the degree of severity sufficient to engage Article 8. The judge noted that the appellant was unlawfully residing in the UK and that her private life had been established when her immigration status was precarious. The judge took into account the fact that the appellant could not speak English and that there was medical treatment available in Pakistan for both her physical and mental health. The judge found that the appellant's family could afford to travel to Pakistan if they wished to stay with her and that she could maintain contact with them through modern means of communication. The judge accepted that separation from her family could exacerbate the appellant's depression, although the judge noted that the appellant was not currently being treated with antidepressants. The judge stated that there was no evidence before her that the appellant would not be supported in Pakistan either by employing carers or by the sponsor or his wife travelling with the appellant to Pakistan. The judge found that the respondent's decision did not disproportionately interfere with Article 8 and the appeal was dismissed.

**The challenge to the judge's decision**

22. The written grounds of appeal contend that the judge failed to consider relevant evidence and that her decision was perverse. The judge was shown the appellant lying in bed with various pieces of medical equipment, including oxygen tanks, connected to her. No reference was made to this, which it was claimed was relevant in assessing the appellant's medical condition. It is further claimed that the judge failed to consider the appellant's discharge summary relating to her hospitalisation which advised that she would need long-term oxygen therapy. The grounds took issue to the judge's finding as to whether the appellant was fit to fly. The grounds asserted that the judge's approach to the appellant's bitter experiences with carers/nurses in Pakistan was inconsistent with the absence of any negative credibility findings on this point made by the

previous panel. The grounds took issue with the judge's finding that the appellant was not receiving any treatment for her moderate to severe depression. It was perverse for the judge to compare the cost of nursing treatment in the UK with that in Pakistan given that the appellant had never employed nurses in the UK. It was additionally perverse for the judge to have considered whether other family members would be able to care for the appellant in Pakistan given the sponsor's evidence about losing contact.

23. Upper Tribunal Judge Kamara gave a broad grant of permission to appeal.

> "The appellant is a disabled, physically and mentally unwell 82-year-old national of Pakistan use human rights claim is based on her family life in the UK with her adult son and his family. It is arguable that the First-tier Tribunal misunderstood that the appellant's care needs were based on her emotional needs rather than the comparative cost of care. It is further arguable that there was a failure to engage with all the evidence relating to the appellant's mental health as well as the absence of contact with relatives remaining in Pakistan and a failure to weigh the lack of ties to these relatives in deciding that they could provide replacement care."

24. In his skeleton argument and his oral submissions Mr Steadman developed the grounds of appeal. He submitted that the judge's conclusion that the medical evidence was broadly consistent with that before the panel in 2019 was factually wrong and that the judge failed to consider the appellant's current state of health in her approach to the Devaseelan guidelines (Devaseelan v SSHD [2002] UKIAT 00702). The judge failed to take into account a number of relevant considerations including the medical evidence setting out a significant deterioration in the appellant's health, both physically and cognitively. The judge's assessment on this point was also inadequately reasoned. The judge failed to adequately address the evidence as to the appellant's fitness to travel. The judge's approach to the test in paragraph 276ADE(1)(vi) failed to take into account the most recent evidence and the judge failed to undertake her assessment as of the date of the hearing. The judge placed undue weight on her erroneous conclusion that the appellant was not receiving any treatment for her conditions. The judge gave inadequate reasons for finding that the appellant did not have any family members in Pakistan. The judge failed to adequately engage with the difficulties the appellant may encounter in accessing appropriate care in Pakistan without the presence of family members.

25. In defending the decision Mr Lindsay drew my attention to the structure of the decision, which he submitted indicated that the judge had properly applied the Devaseelan guidelines, and that the judge's assessment of both the existence of very significant obstacles and her Article 8 proportionality assessment were based on the evidence that post-dated the panel's 2019 decision. It was necessary to infer that the judge must have had in mind the most recent evidence when she came to her conclusions. The judge was entitled to find that the appellant was fit to fly given the dearth of reasoning in the GP's letter. The

judge was entitled to find that the appellant would be adequately provided for by employing carers in Pakistan.

**Discussion**

26. I am satisfied, for the following reasons, that the judge has erred in law in her approach to the most recent medical evidence before her and in her conclusion that the new medical evidence was broadly consistent with that previously before the panel.

27. Having considered the judge's decision in some detail it remains unclear to me whether she did take into account the addendum psychiatric report by Dr Sultan. There was certainly no express reference to the addendum report in the determination. This is surprising given the content of the addendum report. The judge's finding at [87] that the updated medical evidence was "broadly consistent" with the evidence previously before the Tribunal does not sit comfortably with the actual content of the most up-to-date medical evidence.

28. In his addendum report Dr Sultan noted that the appellant appeared confused, that her cognitive functions were "grossly impaired", and that "she was not fully orientated with time, place, and person." Dr Sultan believed that the appellant had very minimal insight and understanding about her mental health issues and that she lacked capacity. It was the Consultant Psychiatrist's opinion that the appellant's cognitive functions had further deteriorated since the last assessment in September 2019. This evidence suggested there had been a material deterioration in the appellant's mental state. There was however no reference to this evidence by the judge, and there was little if any assessment of the likely impact on the appellant on being separated from her family in light of the clearly stated deterioration in her cognitive functioning.

29. The addendum report noted the appellant's claimed fear of abandonment and, in his statement, the sponsor opined that the appellant's mental state was "due to her loneliness she felt in Pakistan with no family support." This was evidence capable of supporting the appellant's Article 8 claim that her emotional needs, which were largely sustained through her bond with her son and his family, could not be replicated by the care provided by nurses in Pakistan, or through visits or remote communication. No adequate consideration was given to this evidence by the judge.

30. There was additionally evidence that the appellant's mobility had deteriorated. The addendum report by the independent GP indicated that the appellant's physical health and mobility had worsened since his previous assessment. Although Dr Sultan did not physically examine the appellant in preparation for his addendum report, he noted during his Skype consultation that she had been lying down in bed and had to make a lot of effort to get up with assistance. Whilst this evidence is of limited cogency in the absence of a physical examination, it is consistent with the addendum independent GP report and is still of some relevance in determining whether the appellant was fit to fly. Nor

am I satisfied that the judge has given a legally adequate reason for rejecting the assertion made by Dr Murtaza, the appellant's registered GP that, given her medical conditions, she was not fit to travel on a plane. The judge reasoned that because the registered GP's letter predated the hospitalisation it was unclear whether the appellant was currently unfit to travel or not. This however assumes that the appellant's fitness to fly was connected to or dependent on the reasons for her hospitalisation. There was however no evidential basis capable of supporting this assumption. Whilst I accept that Dr Murtaza's letter did not give further details as to why the appellant was not fit to travel, Dr Murtaza was nevertheless a registered GP and, given that she is a medical expert, the judge was obliged to give clear and adequate reasons for rejecting this medical opinion.

31. I have other concerns with the judge's decision which, although not necessarily material on their own, when considered holistically with my principle concerns identified above, feed into my finding that the decision is unsustainable.

32. The sponsor stated in oral evidence that, although he had maternal cousins in Pakistan, he had lost contact with them over the years. This evidence does not appear to have been challenged. At [111] the judge found that the appellant did have family in Pakistan and then stated that it was "unknown whether they would be able or willing to help care for the appellant, either on a private (i.e. paid for) or unpaid basis." This appears to have been a factor that the judge took into account in undertaking her Article 8 proportionality assessment. No account however has been taken of the sponsor's unchallenged evidence that he had lost contact with his cousins. This unchallenged evidence would suggest that, regardless of whether the distant family members would or would not be willing to care for the appellant, no such support was available.

33. Furthermore, the judge appeared to be under the misapprehension that the appellant was not, at the time of the hearing, receiving any medical treatment. The judge noted at [109], when undertaking the Article 8 proportionality assessment in respect of the impact on the appellant of being separated from her family, that she was not currently being treated on any antidepressants. This was not the case. The most recent medical document, the letter of 4 February 2021 from Dr Murtaza of the Somerset Medical Centre, set out in some detail the large number of medications prescribed to the appellant. This included, inter-alia, Levothyroxine, Sertraline, Salbutamol, Ramipril, Ivabradine, Bisoprolol, Atorvastatin, Gliciazide, Furosecmide and Chemydur. Moreover, the independent GP report from Dr Burhan additionally identified a range of medications prescribed to the appellant, including Sertraline which is an antidepressant. To the extent that the judge considered that the appellant was not receiving medical treatment for her depression, she failed to take into account a relevant consideration.

34. For the reasons given above I am satisfied that the judge's decision contains errors of law rendering it unsafe.

**Remittal to First-Tier Tribunal**

35. Under Part 3 paragraph 7.2(b) of the Upper Tribunal Practice Statement of the 18 June 2018 the case may be remitted to the First-tier Tribunal if the Upper Tribunal is satisfied that:

    (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or

    (b) the nature or extent of any judicial fact finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.

36. Given the absence of any or adequate consideration of the most up-do-date medical evidence, and given the indication that evidence relating to the appellant's discharge from hospitalisation can be provided for the next hearing, I consider that, in these circumstances, there will need to be a full re-assessment of all the evidence rendering it appropriate to remit the matter back to the First-tier Tribunal for a full fresh (de novo) hearing.

**Notice of Decision**

**The making of the First-tier Tribunal's decision involved the making of an error on a point of law requiring it to be set aside.**

**The case will be remitted back to the First-tier Tribunal for a de novo hearing before a judge other than Judge of the First-tier Tribunal Wyman.**

Signed *D.Blum* Date: 20 September 2021

Upper Tribunal Judge Blum