Upper Tribunal (Immigration and Asylum Chamber) Appeal Number: HU/09454/2019

THE IMMIGRATION ACTS

Heard at Field House (via Skype)	**Decision & Reasons Promulgated**
On 14 January 2021	**On 17 February 2021**

Before

UPPER TRIBUNAL JUDGE BLUNDELL

Between

SHAGUFTA PERVEZ
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER, SHEFFIELD

Respondent

Representation:
For the Appellant: Mr Symes, of counsel, instructed under Direct Access
For the Respondent: Mr Jarvis, Senior Presenting Officer

DECISION AND REASONS

1. The appellant is a Pakistani national who was born on 15 February 1954. She appeals against a decision which was issued by First-tier Tribunal Judge Traynor ("the judge") on 29 April 2020, dismissing her appeal against the respondent's refusal of her application for entry clearance as the Adult Dependent Relative of a settled person in the UK.

Background

2. The appellant is a widow who lives in Rawalpindi, Pakistan. She lost her husband to a heart attack in December 2017. She has two daughters, both of whom live in the United Kingdom and have families of their own. The elder daughter, Aisha, came to the UK in May 2002. The younger daughter, Saira, came to the UK in July 2006.

3. The appellant made an application for entry clearance to join her daughters and their families in the UK on 21 February 2019. The application form was completed by Aisha's husband, Sohail Imtiaz. It was said that she would travel to the United Kingdom with him and would live at the home owned by him and Aisha in Luton. She declared that she had been refused a visit visa in 2017. In answer to question 83, the applicant provided the following additional detail:

> My husband passed away in Dec 2017 and as there is no other relative who can live and support and care for me, I am all alone in my house. I have only two daughters, Aisha Sohail and Saira Shahid, that are both married and settled in the United Kingdom as British citizens, with their husbands and children.
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> I am dependant on my daughters and their family who support me [sic] much as they can. I have severe arthritis, hypertension as well as glaucoma in my both eyes due to which I have already lost my eyesight in my right eye and very weak eyesight on the left. Due to all these medical conditions, I am bed bound, most of the time, and can hardly walk to toilet or kitchen when needed.
>
> I am therefore applicating to join my daughters and my grandchildren in the UK on a permanent basis as they will be looking after me.

4. Also completed by Mr Imtiaz on the appellant's behalf was an Appendix 1 form, providing further details. In that form, the appellant stated that she was suffering from glaucoma in both eyes, arthritis, diabetes and hypertension. She had received some assistance from privately funded housemaids but was not receiving any such assistance at the date of the application. She had experienced lots of issues with these maids. The care and support she required was not available. She was fully supported by Mr Imtiaz.

5. Also submitted with the application was a sponsorship undertaking which was given by Mr Imtiaz under paragraph 35 of the Immigration Rules and a range of supporting evidence. The evidence regarding finance and accommodation showed that Mr Imtiaz was in well-paid employment as a systems engineer for Cisco and that there was more than adequate space for the appellant in the family home. It is necessary to focus on the medical evidence in a little more detail, since it was accepted by Mr Symes before the FtT that there was insufficient evidence to meet the requirements of the Immigration Rules, to which I turn in moment. The medical evidence submitted to the ECO consisted of 39 pages of mostly handwritten medical notes from Pakistan. The most legible documents recorded that the appellant had mild cardiomegaly; pain in both knees for which she had been 'advised surgery' with a 'post-op rehab period 2-3 months'; optic neuropathy in both eyes' which caused 'difficulty in performing daily activities and needs supervision'.

6. The application was refused by the respondent ECO on 1 May 2019. It was not accepted that the applicant was unable to obtain the required level of care in Pakistan and the application was consequently refused under paragraph E-ECDR 2.5.

The Appeal to the First-tier Tribunal

7. The appellant appealed. The grounds of appeal were settled by Mr Imtiaz, although he indicated in the appeal form that he had instructed Mr Symes to represent the appellant at the hearing.

8. The case was duly reviewed by an Entry Clearance Manager, who concluded that there was insufficient evidence to show that the appellant required long term personal care to perform everyday tasks or that she would be unable to obtain the required level of personal care in Pakistan. The ECM did not consider there to be any circumstances outside the assessment required by the Immigration Rules which rendered the decision unlawful under section 6 of the Human Rights Act 1998.

9. The appeal came before the judge on 14 January 2020. A bundle had been filed and served by Mr Symes, acting under the Direct Public Access Scheme. The bundle was helpfully separated into seven sections: the key appeal documents; post-decision evidence; post decision media reports and evidence; the application and the evidence in support of it; authorities; essays and reports on social care; and previous application cover letter.

10. The post-decision medical evidence about the appellant took the form of a 'Medical Case History' written by Dr Tahir Hussain Kharal of the Shaheen Clinic in Rawalpindi. The document is dated 18 December 2019 and reads, in full (and verbatim), as follows:

> This is to certify that Mrs Shagufta Pervez age 65 years 10 months (15th Feb 1954) was examined by me on 18 Dec 2019. She has shown multiple Medical & Psychological problems due to her chronic poorly treated Diabetes and Gout. Hypertension and Rheumatoid Arthritis involved her knee Joints and Spines leading towards permanent Backache and Supported mobility. She also had glaucoma in both eyes where one eye is blind, and one has partial sight.
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> She stated that she is living alone at home as a widow and has not family member of anyone to provide her any support. She complained of sleepless nights and frequent nightmares since her husband passed away. I observed, psychologically she is very depressed and has stressful superadded Phobic attacks. I also noticed that her state of dementia is highly life-threatening condition as she forgets about Injecting correct Insulin dose and often repeated injections result in hypoglycemic unconsciousness.
>
> Geriatric and psychological status, beside other illnesses, of her, need full social and Family care and support in order to avoid any major loss to her life. Recommendations are full time psychological support with proper medication under supervision.
>
> Prescribed Xenax and advised to follow up appointment in next 6-8 weeks.

11. The judge received lengthy statements from the appellant and her family in the United Kingdom. He heard evidence from the appellant's two daughters and their husbands. He heard a submission from the Presenting Officer and Mr Symes before reserving his decision.

12. In his reserved decision, the judge set out the relevant background, the relevant law and the evidence before him in some detail. He came to his findings at [71]-[89]. What follows is only the most basic outline of those detailed findings.

13. At [78], the judge found that the report of Dr Kharal, which he had reproduced in full at [74] of his decision, 'still does not address the very specific requirements identified in the Immigration Rules'. At [81], he found that there was an absence of evidence to establish that the appellant could not perform every day tasks and that he was 'obliged' to conclude that her application could not meet the requirements of the Immigration Rules at paragraph E-ECDR 2.4 of Appendix FM. In the alternative, for reasons he gave at [82]-[84], the judge did not accept that the appellant had discharged the burden of proof upon her to show that she was unable to receive the required level of care in Pakistan. Again, the judge found that

the appellant had failed to adduce the requisite evidence to show that such help was not available. He therefore found that the appellant was unable to meet the ADR Rules and proceeded to consider the human rights claim outside those Rules. Although he found it 'wholly implausible' to suggest that the sponsors should uproot themselves from the United Kingdom to join the appellant in Pakistan, he considered that the appellant's ongoing exclusion was a proportionate course.

The Appeal to the Upper Tribunal

14. There are five grounds of appeal. The first three relate to the judge's conclusion that the requirements of the Immigration Rules were met. Those grounds may be summarised as follows:

(i) In concluding that the appellant did not require long-term personal care to perform everyday tasks, the judge overlooked material matters;

(ii) In concluding that Dr Kharal's opinion was 'hyperbolic', the judge overlooked material evidence which supported that opinion;

(iii) In concluding that the appellant had failed to establish that she would be unable to obtain the requisite care in Pakistan, the judge also overlooked material evidence.

15. The remaining two grounds of appeal are directed against the judge's consideration outside the Immigration Rules on Article 8 ECHR grounds. Those grounds are as follows:

(iv) The judge overlooked evidence which bore on the proportionality assessment, namely medical evidence about the effect of the appellant's exclusion on Aisha.

(v) The judge failed to consider matters which served to diminish the public interest in the appellant's ongoing exclusion.

16. Permission to appeal was granted by First-tier Tribunal Judge Adio in what Mr Symes aptly described as strong terms. He was particularly impressed by the complaint that the judge had overlooked evidence that the appellant required knee surgery, after which there would be a lengthy period of convalescence.

17. The papers were placed before Judge Rimington in August 2020. She was provisionally of the view that the Upper Tribunal might decide without a hearing whether the FtT had erred in law and, if so,

whether its decision should be set aside. She issued directions, seeking submissions on that course and on the merits of the appeal.

18. Written submissions were duly made by Mr Symes. The papers were placed before Judge Perkins shortly thereafter. He concluded that a remote hearing was the proper course and ordered that one should take place, absent any objection from the parties, as soon as possible.

19. So it was that the appeal came before me on 14 January 2021, with Mr Symes representing the appellant and Mr Jarvis representing the respondent. The hearing was remote, by Skype for Business, and proceeded smoothly with no technical difficulty.

Submissions

20. Mr Symes relied on the grounds of appeal and the written submissions. He developed the grounds concisely. In respect of the first ground, Mr Symes submitted that there had been a very detailed statement from the sponsor, Mr Imtiaz, before the judge. At [4] of that statement, the sponsor had set out the difficulties experienced by the appellant as a result of her knees and it had been stated in a note from Dr Bukhari that the appellant had 'pain both knees' and had been 'advised surgery'. There was also evidence from the Eye Care Hospital in Rawalpindi that the appellant had 'optic neuropathy in both eyes' as a result of which she had 'difficulty in performing daily activities and needs supervision'. There was clear evidence, therefore, that her wellbeing was in jeopardy, which supported the opinion given by Dr Kharal. Asked by me whether this was the evidence which was said to satisfy the evidential requirements of paragraph 34 of Appendix FM-SE, Mr Symes confirmed that it was. Taking account of that evidence, together with the evidence that the appellant had been seen bumping into doors, this was what Singh LJ had described in Ribeli as a case of unmet needs, and the judge had erred in failing to treat it as such.

21. In relation to ground two, Mr Symes submitted that the judge had erred in treating the report from Dr Kharal as hyperbolic self-diagnosis. The language of that report showed that it was based on empirical professional observation and not merely the appellant's account of her circumstances. Her diabetes, for example, was said to be 'chronic and poorly treated'.

22. In relation to ground three, Mr Symes submitted that the judge had failed to consider a host of background reports and that, in any event, what had been written by Dr Kharal met the requirements of paragraph 35 of Appendix FM-SE. The judge had held it against the appellant that neither she nor the family had reported the thefts by carers to the Pakistani police but the relevant fact – which was overlooked by the judge – was that the appellant had a subjective fear of carers.

23. Ground four was a short point – which was that the judge had overlooked the circumstances of the family in the United Kingdom in deciding that the appellant's exclusion was proportionate. The judge had overlooked the medical evidence that the stress caused by the appellant's ongoing exclusion was having an impact on the appellant's daughter's ability to care for her children. As for ground five, Mr Symes submitted that the judge had erred in failing to evaluate the fact that the ADR Rules had been introduced after the sponsors had come to the UK, and could not have known that it would be so difficult for the appellant to join them. The submission was more nuanced than had been understood by the judge.

24. For the Entry Clearance Officer, Mr Jarvis submitted that the FtT had not erred in law. The requirements of Appendix FM-SE were rigorous and demanding and the appellant had not adduced the evidence required by the Immigration Rules. The evidential requirements were as significant as the substantive requirements, he submitted. It had been recognised by the Court of Appeal that the introduction of the ADR Rules signalled a significant change in policy. The judge had adopted a lawful approach to the evidence and to the requirements of the Rules. There were difficult tensions in the evidence and the weight which should be given to the different parts of the evidence before the FtT was matter for the judge. He had assessed the medical and other evidence lawfully, and had given adequate reasons for the conclusions he had reached. The judge had been entitled to 'dig down' into the evidence and to consider how the appellant was able to survive on her own notwithstanding what was said by Dr Kharal. There was a conflict in the evidence, which suggested on one side that she was not managing but, on the other, that she was able to do so. There was no evidence, as the judge had found, of the appellant ever falling unconscious as a result of administering the incorrect dose of insulin. The judge was entitled to attach weight to that point.

25. There was no evidence which satisfied the requirement of paragraph 35 of Appendix FM-SE. There was no evidence from one of the sources stipulated in that paragraph which began to show that the appellant would be unable to obtain the requisite care in Pakistan. There was general background evidence about the cultural position in Pakistan but what was required by the Rules was more specific.

26. As for the wider Article 8 ECHR questions raised by grounds three and four, the judge's remarks about an 'open border policy' merely reflected his concern about what would be left in the event that he overlooked – or attached limited weight to – the requirements of the Rules. The prism through which that remark was to be considered was provided by [77] of the decision in Britcits. Against the backdrop of the respondent's policy, the appellant's daughter's difficulties could not conceivably tip the proportionality balance in the appellant's favour. As for the final ground, the fact was that the

respondent had responsibility for the Rules and was entitled to change them. The fact that there used to be a more favourable Rule in force was immaterial to proportionality.

27. In reply, Mr Symes submitted that the decision as a whole suffered from a failure on the part of the judge to appreciate that the appellant was a woman with unmet needs. She had the Sword of Damocles hanging over her and was not required to have a serious accident before she qualified for entry clearance. These precarious circumstances had been made abundantly clear in the sponsor's statement, in particular. Mr Symes asked for time to take instructions before he completed his reply. Having received instructions form the sponsor, he stated that the appellant had been found unconscious by a neighbour after injecting herself with the wrong dose of insulin but that there had been nothing before the judge in which this account had been given.

28. I reserved my decision at the conclusion of the submissions.

The Immigration Rules

29. Prior to 9 July 2012, an Adult Dependent Relative ("ADR") was able to apply for entry clearance under paragraph 317 of the Immigration Rules. A parent or grandparent under the age of 65 was required to establish, amongst other things, that they were living alone in the most exceptional compassionate circumstances, the meaning of which was explored in a number of cases including Senanayake [2005] EWCA Civ 1530; [2006] Imm AR 155. After turning 65, an ADR was no longer required to demonstrate such circumstances, and they were able to be admitted under paragraph 317 if they were able to show that they were divorced, widowed, single or separated; that they had no one but their relatives in the UK to whom they could turn for financial support; and that they would be accommodated and maintained adequately upon arrival.

30. On 9 July 2012, the Secretary of State made extensive changes to the Immigration Rules. Amongst those changes was the replacement of the ADR provisions in Part 8 of the Rules by new provisions which are to be found in Appendix FM of the Immigration Rules. The substantive requirements for entry clearance as an Adult Dependent Relative are to be found at 'sections' EC-DR to D-ECDR of that appendix. As is so often the case, the contentious requirements in this appeal are to be found at E-ECDR 2.4 and 2.5, which provide as follows:

> E-ECDR.2.4. The applicant or, if the applicant and their partner are the sponsor's parents or grandparents, the applicant's partner, must as a result of age, illness or disability require long-term personal care to perform everyday tasks.

> E-ECDR.2.5. The applicant or, if the applicant and their partner are the sponsor's parents or grandparents, the applicant's partner, must be unable, even with the practical and financial help of the sponsor, to obtain the required level of care in the country where they are living, because-
>
> (a) it is not available and there is no person in that country who can reasonably provide it; or
>
> (b) it is not affordable.

31. Appendix FM-SE contains 'the specified evidence applicants need to provide to meet the requirements of rules contained in Appendix FM'. Paragraphs 33-37 relate to ADRs. The two relevant paragraphs are as follows (the word 'Independent' having been added to both paragraphs by an amendment made on 6 April 2014):

> 34. Evidence that, as a result of age, illness or disability, the applicant requires long-term personal care should take the form of:
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> (a) Independent medical evidence that the applicant's physical or mental condition means that they cannot perform everyday tasks; and
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> (b) This must be from a doctor or other health professional.
>
> 35. Independent evidence that the applicant is unable, even with the practical and financial help of the sponsor in the UK, to obtain the required level of care in the country where they are living should be from:
>
> (a) a central or local health authority;
>
> (b) a local authority; or
>
> (c) a doctor or other health professional.

Authorities

32. These provisions have been considered in two Court of Appeal authorities. In R (Britcits) v SSHD [2017] EWCA Civ 368; [2017] 1 WLR 3345, a court comprising the Master of the Rolls, Davis LJ and Sales LJ (as he then was) held that the ADR Rules were not ultra vires, unreasonable or contrary to Article 8 ECHR. In so holding, however, the Master of the Rolls (with whom Davis and Sales LJJ agreed) emphasised the correctness of a point which had been made by counsel for the SSHD, which was that 'the provision of care in the home country must be reasonable both from the perspective of the provider and the perspective of the applicant, and the

standard of such care must be what is required for that particular applicant': [59]. The Master of the Rolls expressed some concern that insufficient attention might have been paid to such considerations in the past. The purpose of the new Rules was said to be twofold: to reduce the burden on the taxpayer for the provision of health and other services to ADRs; and to ensure that those whose needs could only be met in the UK are granted settled status and access to those services: [58].

33. In Ribeli v ECO (Pretoria) [2018] EWCA Civ 611, it was submitted that the Upper Tribunal had erred in law in dismissing the appeal of Ms Ribeli against the refusal of entry clearance as an ADR. She suffered from degenerative back disease, osteoarthritis and fibromyalgia and wished to join her daughter in the UK. The court held that the Upper Tribunal judge had been correct to find that the decision of the FtT was vitiated by legal error, in that it had been wrong, firstly, to dismiss the ECO's concern about the absence of evidence about how exactly the appellant was managing on a day-to-day basis; and, secondly, there was no independent evidence that the appellant was unable to obtain the required level of care in South Africa. Nor had the Upper Tribunal judge erred in proceeding to consider and dismiss the appeal on the merits. The rules were rigorous and demanding and what was crucial was the appellant's physical needs. The UT had been entitled to conclude that the evidence was insufficient to discharge the burden of proof. There was no error of law in finding that the Rules were not met, or that the refusal of entry clearance was proportionate in Article 8 ECHR terms. Before leaving Ribeli, I should mention Mr Symes' particular reliance on what was said by Singh LJ (with whom Hallett LJ agreed) at [47]. In that paragraph, he endorsed a submission made by counsel for the appellant, 'that there can be such a thing as unmet needs; the fact that a person's needs are not being met does not mean that they do not have those needs'.

Analysis

34. The short answer to Mr Symes' concise submissions on the first three grounds is as follows. Despite the extensive evidence before the FtT, the appellant did not adduce evidence which satisfied the rigorous and demanding requirements of paragraphs 34 and 35 of Appendix FM-SE, and the judge was correct to dismiss the appeal under the Immigration Rules. With that summary of my conclusions, I turn to consider the individual grounds.

35. Mr Symes criticises the judge for overlooking material evidence which tended to show that the appellant was in need of long-term personal care or would shortly be in such need. The point he makes about the appellant requiring knee surgery particularly impressed the judge of the FtT who granted permission. Mr Symes also submits that the judge ignored evidence from the sponsor and his family members about the appellant's infirmity.

36. The medical evidence in support of the first of these complaints is extremely thin and it is unsurprising that the judge did not focus upon it. The high point of Mr Symes' case in this regard is a handwritten note from a Dr Bukhari which records, as I have noted above, that the applicant has 'pain both knees' and that she had been 'advised surgery'. This gives no indication of the extent of the appellant's pain or, more importantly, the extent of any physical debilitation caused by it; that being the focus of the Rule. Nor does it give any indication of how urgently the surgery should take place. There is obviously a world of difference between a doctor advising that there must be urgent surgery and a doctor advising that surgery would be advisable in the future to avoid further deterioration.

37. Mr Symes understandably places particular emphasis upon what was said by the sponsor and the relatives in the UK regarding the appellant's ability to manage on her own, and the difficulties with her eyesight and her mobility. As far as the rigorous and demanding requirements of the Immigration Rules are concerned, however, this evidence is not able to progress the appellant's case. What was required was evidence from an independent medical professional that the applicant's physical or mental condition means that she cannot perform everyday tasks. The evidence from Dr Bukhari did not satisfy that requirement. Nor did the equally brief handwritten note from an unidentified practitioner at the Eye Care Hospital in Rawalpindi. This notes that the appellant has optic neuropathy in both eyes and that she has 'difficulty in performing daily activities' and that she 'needs supervision'. Again, there is a wholesale absence of detail. What are the daily activities concerned and to what extent is there a difficulty? Is the appellant unable to perform everyday tasks to the extent that she requires long term personal care or is it merely necessary for someone to check up on her every few days?

38. It was quite properly accepted by Mr Symes that the medical evidence which was before the ECO was insufficient to satisfy the requirements of the Immigration Rules. Before the judge, therefore, he relied on additional evidence in the form of the rather longer note from Dr Kharal. Like the judge, I have reproduced that note in full above. This also fell short of satisfying the requirements of paragraph 34, however. Dr Kharal recommended 'full social and Family care'; he did not state that the appellant required long-term personal care because she was unable to perform everyday tasks. Mr Symes relied on the assertion in Dr Kharal's note that the appellant 'forgets about injecting correct insulin dose and often repeated injections results in hypoglycaemic unconsciousness'. The first part of that statement appears to be based on what the appellant told Dr Kharal. It is not clear what the second part of the statement means. It appears to be a statement made in the abstract, about the possible consequences of erroneous insulin administration, and it does not appear to suggest that the appellant has made such an error with the result that she had fallen

unconscious. As Mr Symes confirmed at the end of his submissions, and as the judge held at [79], there was no evidence before the FtT to suggest that the appellant had ever fallen unconscious for this reason.

39. The judge was entitled to draw on the fact that the appellant has been living on her own since her husband passed away in 2017. She was still attending her medical appointments, as he noted at [78], and the rather 'hyperbolic' statements made by Dr Kharal in his note ("to avoid major loss to her life") were not supported by the fact that there had been no serious incidents whilst the appellant was caring for herself. This was not a case of 'unmet need', as Mr Symes submits with reference to Ribeli; it was a case where the sea of evidence before the judge was legitimately found not to establish need to the extent suggested in the family's witness statements. Be that as it may, the gravamen of the judge's conclusion is clear from [81]: he considered that he was *obliged* to find that the appellant did not require long term personal care because she had not adduced the requisite evidence. That was the only proper conclusion which was open to the judge, given the limited and unsatisfactory medical evidence before him.

40. Nor do I accept that the judge erred in his evaluation of Dr Kharal's note. He was entitled to adopt the Presenting Officer's description of that note as being 'hyperbolic' in places and it is not correct that the judge was not cognisant of the lengthy statements which were made by the family members. He considered the contents of those statements at various stages of his decision and he was not required to rehearse them in greater detail in his analysis. The judge's statement at [80] of his decision – that Dr Kharal's evidence was based upon what he had been told by the appellant – was open to him when read alongside Dr Kharal's note. It is not clear why he said that the appellant had 'poorly treated' diabetes or gout, and whether that was based on tests undertaken by him or the appellant's word. The second paragraph begins by recording what the appellant had told Dr Kharal but Mr Symes notes that he had 'observed' that the appellant was 'very depressed' but it is not clear whether this was a formal diagnosis of depression and, if so, whether that diagnosis had been made by Dr Kharal or was more long-standing. The statement made thereafter, about wrongly administering insulin, was unclear for the reasons I have set out.

41. The judge was entitled, given the deficiencies in the evidence provided by Dr Kharal and the other practitioners, to find that the evidence presented was insufficient to show that the appellant required long-term personal care in the manner prescribed by paragraph 34 of Appendix FM-SE. The first two grounds disclose no error of law in the judge's conclusions.

42. Ground three may be disposed of more briefly. Mr Symes contends that the judge overlooked a raft of evidence which tended to suggest that the appellant could not receive the care she

required in Pakistan. There was extensive evidence, from a range of sources, about the inadequacy of the care which might be available in Pakistan. There was no evidence which began to address the specific requirement in paragraph 35 of Appendix FM-SE, however. Insofar as the judge might be said to have failed to examine the evidence from the Edhi Care Foundation, therefore, he was not required to do so; the requirement in paragraph 35 was crystal clear; the rigorous and demanding nature of it was underlined in Ribeli; and there was no independent evidence from one of the sources identified in that paragraph that the appellant could not receive adequate care in her country of origin.

43. Ultimately, as I stated at the outset of my analysis, this was not a case which could properly succeed under the Immigration Rules. The medical evidence fell short of satisfying paragraph 34 of Appendix FM-SE and there was simply no specified evidence which began to engage with paragraph 35.

44. In relation to the grounds of appeal which focus on the judge's assessment outside the Immigration Rules, I also consider there to be no material legal error in that analysis. By ground four, the appellant criticises the judge for overlooking evidence about Aisha's mental health and her ability to care for her son because she is worrying about her mother all the time. But that evidence was recorded by the judge at [56]-[57] and there is no reason to think that he overlooked it when he came to make his assessment, which included consideration of s55 of the Borders, Citizenship and Immigration Act 2009, at [85]-[89] of this careful decision. There was, in any event, nothing before the judge to suggest that the consequences of refusal would be so detrimental to the family in the UK as to overcome the public policy decision which underpinned the change to the Rules, as explained in Britcits. This was certainly not a case in which it could properly be said that the best interests of a child pressed overwhelmingly in support of a grandparent's admission.

45. By ground five, Mr Symes submits that there were further material considerations which were overlooked by the judge in considering the proportionality of the appellant's continued exclusion. The point which he particularly relied upon in his oral submissions was the fact that the Rules changed in 2012, whereas the family had decided to migrate to the UK long before that. Mr Jarvis's submission in response was extremely simple and blunt: the respondent is entitled to change the Rules. That must be correct: the Rules do not create vested rights which cannot be taken away at a later stage. The respondent is entitled to change the Rules and to decide applications on the basis of the Rules in force at the date of decision: Odelola [2009] 1 WLR 1230. The sponsoring family were never given a clear and unequivocal promise devoid of relevant qualification that paragraph 317 would remain as it was in perpetuity. Mr Imtiaz came to the UK in 1997. Aisha joined him in 2002, at which point the appellant was a married woman of 48. She

would not have met the Rules at that stage. The Rules changed in 2012, at which stage she was still a married woman under the age of 65. I cannot see how the change in the Rules was remotely relevant to the assessment of proportionality in such a case.

46. In his grounds, Mr Symes also made reference to the evidence before the FtT which showed, or was said to show, that it is culturally taboo for widows in Pakistan to rely on external support. Even if the appellant could not tick all of the evidential boxes presented by Appendix FM-SE, he submits, this was highly relevant to the situation in which she found herself in Pakistan. There are two problems with this submission. The first is that the judge was not prepared to accept, for good and proper reason, that the appellant was in need of support to the extent suggested. The second is that the concerns expressed in that regard in the sponsor's statement do not appear to be supported by the other evidence in the appellant's bundle. Mr Symes cites the entirety of a report by the British Council entitled 'Moving from the Margins' but I cannot find a statement within it which suggests that it is taboo for elderly widows to rely on external support, as is suggested at [16] of the grounds. The section from that report which is cited at [25] of Mr Symes' written submissions suggests (as is, I think, uncontroversial) that the expectation is that children will look after their elderly parents so as to 'repay' the older generation. But that does not go to show that it is positively taboo for an elderly widow to seek or to receive support from outside the family.

47. For all of these reasons, I do not accept that the judge erred materially in law in his decision, which shall stand.

Notice of Decision

The appellant's appeal is dismissed and the decision of the FtT shall stand.

No anonymity direction is made.

M.J.Blundell

Judge of the Upper Tribunal
Immigration and Asylum Chamber

11 February 2020