



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2023-003675

First-tier Tribunal Nos:
HU/02050/2022

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 23 November 2023**

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAPMAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR SYED AKBAR ALI
(NO ANONYMITY ORDER MADE)**

Respondent

Representation:

For the Appellant: Ms R. Arif, Senior Home Office Presenting Officer

For the Respondent: In person, accompanied by his son and
unrepresented

Heard at Birmingham Civil Justice Centre on 31 October 2023

DECISION AND REASONS

1. The SSHD appeals against a decision of First tier Tribunal Judge Young-Harry who in a decision and reasons dated 15 May 2023 allowed the appeal of the Respondent against a decision allowing his appeal. For the sake of convenience I shall, in this decision and reasons, refer to the Appellant as the SSHD and the Respondent as the Claimant.
2. The Claimant is a national of Pakistan, born on 17 August 1942. He was a regular visitor to the United Kingdom last arriving on 17 April 2021 and he has not returned to Pakistan since. In February 2022, he applied for leave to remain on the basis of his private and family life in the United Kingdom. This application was refused in a decision dated 23 November 2022.
3. On 12 April 2023, his appeal came before First tier Tribunal Judge Young-Harry for hearing. In a decision and reasons promulgated on 15 May 2023, the appeal was allowed with reference to paragraph 276ADE(vi) of the Immigration Rules and article 8 of ECHR.
4. On 22 May 2023, the SSHD applied, in time, for permission to appeal to the Upper Tribunal. The grounds of appeal asserted that the judge:
 - (i) failed to undertake a broad evaluative judgment of *Kamara* [2016] EWCA Civ 813, when making the finding that the Claimant would face very significant obstacles to integration on return to Pakistan;
 - (ii) has focused solely on the time the Claimant has spent outside Pakistan and failed to assess all factors which would include his remaining family ties, ability to speak the language and support structures available on return;
 - (iii) at [14] failed to identify circumstance that are above those of mere hardship, mere difficulty, mere hurdles, mere inconvenience that are required to meet the high threshold;
 - (iv) materially erred in allowing the appeal on this basis.
5. In a decision dated 20 August 2023, permission was granted by First tier Tribunal Judge Rhys Davies in the following terms:

“3. The Grounds have 4 sub-paragraphs, but make one argument: that the Judge erred in her application of the “very significant obstacles to integration” test.

4. There is merit in the Grounds. In an otherwise commendably concise Decision, although the Judge did state the correct test, [14], it is arguable that the Judge failed to take account of factors that would indicate an ability to integrate and/or failed to explain why

the matters presented by the Appellant amounted to very significant obstacles (for example, his ill-health, when there was no medical evidence).

5. The Judge found that Paragraph 276ADE(1)(vi) was met and so allowed the appeal with reference to TZ (Pakistan) [2018] EWCA Civ 1109, and then also went on consider the appeal outside the Immigration Rules and allowed it on that basis also. However, the Judge's latter finding depends on the earlier finding [17], so that separate conclusion is not a reason to refuse permission to appeal." Hearing

6. At the hearing before the Upper Tribunal, Ms Arif submitted that the Judge had made a material error of law in a material matter and had failed to apply the test of very significant obstacles – whilst at [14] the Judge referred to the correct test it was her contention that the Judge failed to correctly apply it.
7. There was no record of proceedings on the digital Court file, so I asked Ms Arif if she had the record of proceedings completed by the Presenting Officer, however, the Presenting Officer's record was handwritten and difficult to read. My clerk helpfully managed to obtain the recording of the proceedings in the First tier Tribunal, so we were able to listen to the evidence provided by the Claimant and his son, which was relatively brief. It was also clear from the Claimant's witness statement that his wife had died in 2022, that he has no close family members remaining in Pakistan and that since his retirement in 2016 he had spent 6 months a year in the United Kingdom.
8. Ms Arif submitted that the Judge had mainly considered the Claimant's time spent outside the United Kingdom rather than his re-integration into Pakistan. She submitted that the factors identified by the Judge amounted to mere hardship and she had not considered the circumstances the Claimant would be returning to in Pakistan.
9. In reply, Mr Syed Muzzarum, on behalf of his father stated that he and his father had been cross-examined by the Presenting Officer and that he had made a submission about his father's health issues.

Decision and reasons

10. I have given careful consideration to the decision and reasons of the First tier Tribunal Judge. She made the following findings:
 - (i) having had regard to *Kugathas*, she was satisfied on the evidence that the appellant and sponsor share more than normal emotional ties [9];

- (ii) she accepted the appellant's evidence that he relies on his son both financially and emotionally and the sponsor provides the appellant with real, effective and committed support, in line with *Rai* [9];
 - (iii) given the length of time the appellant has been in the UK it is likely he has formed meaningful ties to the UK, including with his sponsor's family and that he has established a private life and article 8 was engaged [10];
 - (iv) the decision does interfere with his article 8 rights and is of sufficient gravity as to potentially engage the operation of article 8(1) but was lawfully open to the respondent to make and is in pursuit of the legitimate aim of immigration control, which includes maintaining the economic well-being of the country [11];
 - (v) she adopted a balance sheet approach as recommended in *Hesham Ali* [2016] UKSC 60 and *Agyarko* [2017] UKSC 11 noting that she was required to strike a fair balance between the weighty public interest of maintaining a firm and fair immigration policy against the appellant's own interests and the starting point was to determine whether the appellant was able to meet the requirements of the immigration rules [12];
 - (vi) the requirements of paragraph 276ADE(vi) were met in light of the appellant's age, his ill-health, his absence from Pakistan working in Saudi Arabia for 35 years and the fact he has spent many years in the UK where he has two children and has integrated to a significant extent, that he would struggle on return to Pakistan given that he has lived in other parts of the world for so many years and reintegrating at this stage in his life would prove challenging and would amount to very significant obstacles to his integration [13] and [14];
 - (vii) following the judgment of the Court of Appeal in *TZ (Pakistan)* [2018] EWCA Civ 1109, given that the Appellant met the requirements of the Immigration Rules that was determinative of the appeal in that the proportionality assessment should be decided in the appellant's favour and the appeal allowed with regard to article 8, bearing in mind the statutory public interest considerations set out at s117B of the NIAA 2002 [15]-[17].
11. In her grounds of appeal, the SSHD has challenged the manner in which the Judge conducted the assessment of whether or not there were very significant obstacles to the Claimant's integration into Pakistan, asserting that she did not conduct a broad evaluative judgment or focus on all relevant factors to meet the high threshold set out in *Kamara (op cit)*.

12. I have given the grounds of appeal and Ms Arif's submissions careful consideration. I have also had regard to the judgment of the Court of Appeal in Parveen [2018] EWCA Civ 932, where Lord Justice Underhill held as follows at [9]:

"The task of the Secretary of State, or the Tribunal, in any given case is simply to assess the obstacles to integration relied on, whether characterised as hardship or difficulty or anything else, and to decide whether they regard them as "very significant."

13. I have concluded that this exactly is what the Judge did in this case. The weight to be attached to the obstacles to integration relied upon was a matter for her and it is clear from the decision that she concluded that the Claimant's age of 80 (at that time), his health issues (COPD) and the fact he has spent extensive periods of time outside Pakistan: 35 years in Saudi Arabia and substantial time in the United Kingdom with his sons and their families since 2016 since his retirement, did on the particular facts of this case amount to very significant obstacles to his integration into Pakistan.
14. Therefore, I find that the grounds of appeal amount to no more than a disagreement with the judge's findings of fact and conclusions which were open to her to make on the evidence before her and disclose no material error of law.

Notice of Decision

15. The appeal by the SSHD is dismissed, with the consequence that the decision and reasons of First tier Tribunal Judge Young-Harry allowing the Claimant's appeal is upheld.

Rebecca Chapman

Deputy Upper Tribunal Judge Chapman

17 November 2023