Upper Tribunal
(Immigration and Asylum Chamber)

Case Nos: UI-2024-000901
and UI-2024-001623
[First-tier Tribunal No: HU/52613/2023]

THE IMMIGRATION ACTS

Decisions and Reasons Issued

On 23rd of May 2024

Before

Upper Tribunal Judge L K SMITH
Deputy Upper Tribunal Judge MANUELL

Between

Mrs NAWERA HAQUE
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr K Wood, Solicitor
(Immigration Advice Services Ltd)
For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

Heard at Field House on 10 May 2024

DECISION AND REASONS

Introduction

1. The Appellant appealed with permission granted in part by First-tier Tribunal Judge Brannan on 7 September 2023, and in part by Upper Tribunal Judge L K Smith on 24 April 2024 against the decision of First-tier Tribunal Judge Bonavero who had dismissed the appeal of the Appellant against the refusal of her Article 8 ECHR claim. The decision and reasons was promulgated on 19 December 2023.

2. The Appellant is a national of the United States of America, originally from Pakistan, born on 28 June 1967. She has travelled regularly to the United Kingdom to visit her daughter, also an American national, who came to the United Kingdom in 2017 following her marriage to an EU national. The Appellant last entered the United Kingdom on 10 September 2021 as a visitor.

3. On 4 March 2022 the Appellant applied for leave to remain in the United Kingdom on Article 8 ECHR family and private life grounds. Her application was refused by the Respondent on 15 February 2023, in summary because the Appellant could not meet any relevant Immigration Rule and that there were no exceptional circumstances which would result in unjustifiably harsh consequences.

5. Judge Bonavero found that the Appellant could reintegrate into the USA without facing very significant obstacles. She had lived there for many years and owned several investment properties. There was no prospect of significant financial difficulties. Paragraph PL5.1 of the Immigration Rules was not met.

6. Judge Bonavero then considered the Appellant's Article 8 ECHR family life claim outside the Immigration Rules, with implied reference to sections 117A-B of the Nationality, Immigration and Asylum Act 2002. The judge conducted a balancing exercise and found that the Appellant's family life interests to which some weight should be given were outweighed by the public interest in controlling immigration. The Appellant had come to the United Kingdom as a visitor with no expectation of remaining. She had the means to make regular visits which enabled her to have significant contact with her daughter and her granddaughter. The daughter had shown herself capable of looking after the

granddaughter without the Appellant's help. That had been the status quo. Taking into account the granddaughter's best interests, there remained no disproportionate interference with the Appellant's family life. By necessary implication the Judge found that there were no exceptional circumstances. Hence the appeal was dismissed.

7. The Appellant then applied for permission to appeal that decision. First-tier Tribunal Judge Brannan considered that it was arguable that Judge Bonavero had erred by applying the wrong test for Article 8 ECHR proportionality, but refused permission to appeal on the other grounds of appeal raised. Upper Tribunal Judge L K Smith extended the permission to appeal to cover the two other grounds of appeal, i.e., (2) failure to take account of the whole of the evidence with particular reference to the independent social worker's report and (3) failure to give sufficient reasons for finding that the Appellant did not face very significant obstacles to her re-integration into the USA. The extended grant of permission to appeal was to enable consideration to be given to the Judge's overall balancing exercise.

8. Notice under rule 24 dated 19 March 2024 had been served by the Respondent, indicating that the onwards appeal was opposed. (The notice referred to the limited grant of permission to appeal.) Mr Melvin also submitted a skeleton argument serving as the Respondent's amended Rule 24 reply dealing with the other two grounds.

Submissions

9. Mr Wood for the Appellant relied on the grounds of onwards appeal. As to ground (1), the Judge had applied too high a threshold, as appeared from [10] of his decision where he had said that the Appellant had to prove "compelling reasons leading to unjustifiably harsh consequences" in order to succeed in her Article 8 ECHR claim outside the Immigration Rules. It appeared from that formula that the Judge had in mind the test applicable in deportation appeals from section 117C(6) of the Nationality, Immigration and Asylum Act 2002. That was plainly wrong.

10. As to ground (2), the Judge had referred to the report of the independent social worker at [11] of his decision, but had failed to

address material matters raised in that report, such as the emotional detriment to the granddaughter which would result from the Appellant's absence. The judge had failed to give adequate weight to those factors in the balancing exercise, which was an error of law which required the decision to be set aside.

11. As to ground (3), the Judge had failed to provide any or any adequate reasons for his finding that the Appellant did not meet paragraph PL5.1 of the Immigration Rules. The Appellant had lost her husband and her son and had no family network of support to return to in the USA. The Judge had failed to consider that factor. Again the error of law required that the decision should be set aside.

12. Mr Melvin for the Respondent relied on the rule 24 notice filed earlier and his skeleton argument. The Judge had not been obliged to set out the test for exceptional circumstances. In Agyarko [2017] UKSC 11 at [56] it was stated: 'The reference to exceptional circumstances in the European case law means that in cases involving precarious family life "something very compelling… is required to outweigh the public interest", applying a proportionality test.' The Judge's decision showed that he had not applied an elevated test but had taken a balance sheet approach. The Appellant's own skeleton argument stated "There are compelling circumstances in this case that allows for consideration inside and outside of the Immigration Rules" (see p.5 of the skeleton argument.) There was no merit in ground (1) which was a semantic argument only.

13. As to ground (2), this was really a challenge to the weight which the Judge had given to the independent social worker's report. The Judge demonstrated that he had considered the report with care, such that the weight to be given to it was for him to determine. Ground (3) was simply a reasons challenge, and had no substance. Absence of a support network could not amount to very significant obstacles on the facts as found. The appeal should be dismissed.

14. In reply, Mr Wood submitted that it was not clear from the decision what weight the Judge had placed on the social worker's report. The appeal should be remitted if the tribunal found that there was a material error of law.

No material error of law finding

15. The Tribunal reserved its decision, which now follows. The Tribunal considers that the submissions made on the Appellant's behalf as to material error(s) of law are not well founded. In the Tribunal's view, the errors asserted to exist in the decision are based on a misreading of the decision, which was succinct in form, in accordance with current guidance from the higher courts.

16. As the Judge stated, the essential facts were not in dispute. These included the fact that the Appellant's daughter was divorced from her husband, who had access rights to their child, which meant that the Appellant's daughter and granddaughter could not go the USA. The Judge accepted that it was a case which attracted sympathy, and explained why that was not enough for the appeal to be allowed.

17. As to ground (1), as Mr Melvin reminded the Tribunal, in Agyarko (above) the Supreme Court stated that '"something very compelling… is required to outweigh the public interest", applying a proportionality test'. We consider that Judge Bonavero applied that approach and thus the correct test. The essential question was whether there were factors in this case which would render removal to be unjustifiably harsh. Whether those factors are described as "compelling" or "exceptional" circumstances makes no difference in substance. It is, as Mr Melvin submitted, a pure matter of semantics. As the Judge stated at [15], he adopted a balance sheet approach. There is no suggestion of the application of any elevated public interest test or confusion with section s117C (6). Ground (1) fails.

18. Ground (2), which asserted that the Judge had failed to consider the emotional impact of the separation from the Appellant on her granddaughter has no substance. It is contradicted by [11] and [12] of the Judge's decision:

> "I accept Ms Edwards's conclusion at paragraph 2.7 that it would be in [the child's] best interests for the Appellant to remain in the UK and I treat that as a primary consideration."

"Having said that, I also note that [the child] was well cared for before the Appellant's arrival in the UK, and that this is likely to continue in the future. Ms Edwards says this on the topic (§9.1.2): 'Therefore I would identify that regardless of whether the Appellant is present it is likely that [the mother] will continue to meet the emotional and physical needs of [the child] within her care.'"

19. Ground (3) also lacks substance and fails. There was no suggestion that the Judge erred in his summary of the situation to which the Appellant would return to in the USA, her adopted home for some 30 years or more. The Appellant lost her spouse in 2018 and her son in 2020, i.e., prior to her latest visit to the United Kingdom to see her daughter and granddaughter. The Appellant has close family members in Canada. The Appellant owns investment properties in the USA.

20. At [14] Judge Bonavero stated:

"I accept that the Appellant no longer has access to her family home as she currently rents it out. However she decided to do this some time before applying to stay in the United Kingdom permanently. She described in her evidence how she spends much of the year travelling, visiting family in Canada and elsewhere. That could continue in the future."

21. At [17] Judge Bonavero stated:

"I further accept that the family has gone through very significant difficulties. The Appellant has lost her husband and son. The Appellant's daughter has been the victim of domestic violence. I am sure that these experiences have brought them closer together and that they depend on one another more than they otherwise would have."

22. The Judge went on to observe that the family could continue to have significant contact, as they had done previously, by visits. Their preference to live together was outweighed by the public interest in immigration control. In our view the Judge has demonstrated that he has taken all relevant and material factors into account in conducting the Article 8 ECHR balancing exercise.

Adequate reasons have been given and his conclusions were open to him.

23. The Tribunal accordingly finds that there was no material error of law in the decision challenged. The onwards appeal is dismissed.

Notice of Decision

The appeal is dismissed

The making of the previous decision did not involve the making of a material error on a point of law. The decision stands unchanged.

Signed *R J Manuell* **Dated** 14 May 2024

Deputy Upper Tribunal Judge Manuell