IAC-FH-AR-V2

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/51427/2013

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 15 September 2015	**On 9 November 2015**
Prepared 15 September 2015	

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MRS KURSHID BEGUM
(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:
For the Appellant: Mr P Kandola, Senior Presenting Officer
For the Respondent: Mr N S Ahluwalia, Counsel, instructed by Ratner & Co

DECISION AND REASONS

1. In this decision the Appellant is referred to as the Secretary of State and the Respondent is referred as the Claimant.

2. The Claimant, a national of Pakistan, date of birth 1 January 1944, appealed against the Secretary of State's decision to refuse to vary leave to remain, pursuant to an application on 16 October 2013, and to make removal directions with reference to Section 47 of the Immigration, Asylum and Nationality Act 2006. The Reasons for Refusal Letter is dated

21 November 2013 and refusal was made with reference to the Immigration Rules, particularly Appendix FM and paragraph 276ADE.

3. The central elements of Appendix FM that came to be considered were limited but essentially did not address what had become a critical issue, namely the deterioration in the health of the Claimant with the onset of Parkinson's disease. Other medical problems are not material because they pre-existed the events following the claimant's arrival in the United Kingdom in 2013.

4. The matter came before First-tier Tribunal Judge Col who promulgated her decision [D] on 18 December 2015 by which she dismissed the appeal under the Immigration Rules but allowed the appeal on Article 8 ECHR grounds.

5. By an application dated 24 March 2015 the Secretary of State sought to challenge the judge's decision and argued four principal points. First, that the judge had failed to consider whether it would be unreasonable for any of the Claimant's children to return to Pakistan with her and thereafter provide the necessary personal care that she needed because of the deterioration in her health.

6. Secondly, issue was taken with that the judge had failed to consider whether it was reasonable for a lady, the Claimant's daughter-in-law, to be expected to return to care for the Claimant.

7. Thirdly, it was said that the judge's assessment of proportionality had failed to properly take into account the requirements of Appendix FM particularly at paragraphs ECDR.1.1 and ECDR.2.1 to ECDR2.5.

8. Finally it was said that the judge had failed to properly consider the evidence concerning the availability of other family members to whom the Claimant might turn to for assistance on a return to Pakistan.

9. Mr Kandola's arguments essentially addressed those matters and by reference to the judge's decision sought to support the view that there was sustainable criticism which demonstrated material errors of law.

10. It is to a degree self-evident that the person who settled the grounds can only have had the judge's decision before them. It certainly does not appear from the format of the grounds that the person drafting them had been aware of what had transpired at the hearing before the judge in a number of particular matters pertinent to the grounds seeking permission.

11. The position, therefore, was notwithstanding the relative brevity of the reasons for refusal, a great deal of evidence was provided to the judge upon which it is fair to say she made a number of cogent and clear findings. The application for permission came before First-tier Tribunal Judge Cheales who granted the Secretary of State permission to appeal. Mr Ahluwalia sent a Rule 24 notice and indexs of documents that had been produced before the First-tier Tribunal and at least one afterwards. For

ease of reference I have followed the headings or bullet points made by Mr Ahluwalia. In relation to the first ground, I am satisfied that the judge was aware of the status of the various family members in the United Kingdom. The fact is it was not argued on behalf of the Presenting Officer, as is accepted by Mr Kandola, that any of the Claimant's children should return to Pakistan to look after her.

12. It is clear from the judge's decision that the same issue was not raised in the Reasons for Refusal Letter, it was not raised by the Presenting Officer at the hearing by way of cross-examination or in submissions: The matter was quite simply not taken up with the judge. I reached the firm view that the judge really cannot be criticised about an issue which was not pursued by the Secretary of State; when it was plainly open to her to do so. Further, it does not seem to me that this was a Robinson obvious point because if it was so obvious it plainly would have been taken by the parties at the hearing but it never was. It was not suggested that anything in the Reasons for refusal Letter which gave rise to that being an issue pursued.

13. The status of one of the Claimant's children, Khalid, therefore makes no difference to the point. Quite simply there was nothing to suggest there was any evidence to show he had the necessary skills to care for the Claimant on return nor to supervise employed staff in providing that care.

14. Accordingly, I find there is no substance in the first ground raised by the Secretary of State.

15. The second ground and the possibilities of Rukshana Inayat returning to Pakistan, and the person drafting it misunderstood that Miss Inayat had not recently entered the United Kingdom but had been here for about three years having previously resided in Pakistan supervising the care of the Claimant.

16. There was, as previously pointed out, nothing to suggest that the Secretary of State was arguing, Miss Inayat should return to Pakistan. Secondly, the judge was clearly aware, from reading [D33}, the history of her presence in Pakistan and the circumstances in which she had finally come to the United Kingdom following separation from her husband in December 2000. Accordingly it really was not argued that it would be reasonable for her to return to Pakistan. Therefore, the absence of consideration of the matter by the judge did not constitute an error of law.

17. The third ground essentially argued a number of matters that go to some extent the heart of the claim, namely the assessment of proportionality. The judge plainly had a range of considerations about the accommodation, the care, the needs of the Claimant and the circumstances in which she would find herself on return without care, without suitable accommodation, with the grave difficulties, as already had been established, in seeking to find an employee of quality, able to consistently provide the care required and the absence of suitable care

homes, care facilities and the lack of suitable elderly care or senior citizens homes in Pakistan. Those matters were all addressed in the decision amongst other things [D7, 30, 35, 42 and 47].

18. It is plain, I find, from a fair reading of the decision, that the judge understood and cited relevant law relating to the relationship between the Immigration Rules, the need for exceptional or compelling circumstances and the context in which one might in the appropriate case consider the issue of Article 8 ECHR outside of the Rules.

19. I am satisfied that the judge's reasoning made plain why she reached the view she did bearing in mind she must have understood the relationship between the Rules and their applicability with Article 8. In the circumstances I do not find the third ground of challenge amounts to more than a disagreement with the findings of fact and conclusions driven from them by the judge. Accordingly, ground 3 does not disclose any arguable error of law.

20. In relation to ground 4, this again returns to the issue of the existence of family in Pakistan and to what extent that family could be turned to for assistance.

21. Mr Ahluwalia recited in his Rule 24 response the evidence given by Iqbal Inyiat concerning the Claimant's siblings who were dead, established by the witness statements, confirmatory evidence in the witness statement of Amir Inyiat. The judge having heard the evidence and assessed the credibility of the witnesses, reached the conclusion witch is not actually challenged in the grounds that the Claimant "… has no close relatives living left in Pakistan". [D 48].

22. In the circumstances it seemed to me that ground 4 has no merits. The judge plainly addressed that matter and it was open to argument on that issue which the judge evidently considered and reached the conclusion that she did. In any event, given the judge was entitled to choose which evidence she preferred, the decision simply did not demonstrate an error of law by the judge so much as a disagreement by the Secretary of State with a finding made by the judge.

23. Accordingly having considered these matters I am satisfied that ground 4 has no merits and does not disclose any arguable error of law. In the circumstances I can find no other material challenge of substance to the decision under Article 8 of the ECHR. The Original Tribunal's decision stands.

24. No anonymity order was made nor is one necessary or required.

NOTICE OF DECISION

The appeal of the Secretary of State is dismissed.

Signed Date 2 November 2015

Deputy Upper Tribunal Judge Davey