



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number HU/01049/2019

THE IMMIGRATION ACTS

Heard at Priory Courts
On 4th September 2019

Decision and Reasons Promulgated
On 13th September 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

MUHAMMAD ABID
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Ahmed (Counsel, instructed by Riaz Khan & co, Solicitors)

For the Respondent: Ms H Aboni (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellant's application to remain in the UK on the basis of his family life and human rights grounds was rejected and his appeal dismissed by First-tier Tribunal Judge Sills for the reasons given in the decision promulgated on the 1st of May 2019. There had been a previous refusal and appeal before First-tier Tribunal Judge Gurung-Thapa at Nottingham and she had dismissed the appeal for the reasons given in her decision of the 12th of May 2016. That decision is now available but was not before Judge Sills.
2. At paragraph 12 of his decision Judge Sills noted that the previous decision had not been provided and made a number of assumptions about the nature of the decision and the issues and supporting evidence that would have been raised. In paragraph 13

the Judge noted that the medical evidence before him post-dated the decision of Judge Gurung-Thapa and in the following paragraphs considered it before finding that the evidence did not show that the Sponsor was dependent on the Appellant and in any event she could relocate and the evidence did not show that medical treatment would not be available.

3. The grounds of application for permission to appeal argued that the Judge was wrong to have made the assumptions in paragraph 12 of the decision. It is also argued that the Judge was wrong to reject the GP's evidence and the Judge's medical qualifications had not been explained so it was difficult to see how he could have reached that conclusion. There is criticism of paragraph 16 and it is asserted that the Judge speculated about the doctor's specialism and had not considered if treatment was available in Pakistan. It was submitted that there were insurmountable obstacles.
4. Permission was granted on the basis that the Judge may have erred in speculating what evidence was available. The Home Office rule 24 response argued that the Judge's assumption was correct by reference to the previous decision and in any event the Judge had considered the evidence that was relied on. At the hearing both parties made submissions in line with their respective cases with Mr Ahmed adding that there was no evidence that the Sponsor had been treated as a vulnerable witness.
5. Taking the last point first there does not appear to have been an application for the Sponsor to be treated as a vulnerable witness and that was not a ground raised in the application made following the decision. In any case the Judge was clearly fully aware of her medical issues raised in the reports before him and Mr Ahmed did not suggest in submissions that there was any indication that the Sponsor had been treated inappropriately in any way. If there had been a concern relating to her treatment that would have been raised in the grounds of application. The evidence does not show that there was any error in the approach taken in the conduct of the hearing.
6. It was not the fault of the Judge that neither party provided him with a copy of the previous decision. Given the nature of the application made it was hardly speculative to make the assumptions that the Judge did. Besides he only referred to "her medical problems" having been the subject of evidence, he did not assume what the problems then were or what evidence might have been before the previous Judge. Still less did he make any assumptions of basic facts that could be said to have been then taken as the starting point for his consideration of the evidence he had before him.
7. As the observations made in paragraph 12 were obvious from the nature of the proceedings I am not persuaded that the contents of paragraph 12 could be said to be an error. Even if the assumptions in paragraph 12 were an error they were clearly not material. The decision has to be read as a whole and the medical evidence being relied on before Judge Sills post-dated the decision. On any view he did consider the fresh evidence and nothing in the decision shows that the findings made were influenced by the decision that was not before him.
8. As it happens the previous decision has now been provided. A brief perusal of that decision shows that Judge Sills' assumptions were correct in that medical evidence had

been available and had been considered by the previous Judge. To repeat the observation above Judge Sills had not assumed what that evidence might have been or why Judge Gurung-Thapa might have rejected it.

9. Turning to the substance of Judge Sills' decision the grounds at paragraph 11 are bordering on the abusive and appear to misunderstand the Judge's role. No Judge is obliged to simply accept expert evidence without question which is what the grounds appear to be based on and any expert's opinion can properly be rejected if the Judge gives sufficient reasons.
10. So far as the GP's report was concerned the fact that it was over a year-old would significantly undermine the weight that could be attached to it. Much can change over a 12 month period and the Sponsor and Appellant had been able to travel in 2016, it was not explained what had changed or what it was that, in January 2018, prevented the Sponsor from flying.
11. The observations by the Judge in the discussion at paragraphs 15 and 16 were justified. It cannot be argued that the Judge's consideration of the psychiatric evidence was superficial and there were aspects of the report which were unclear and vague. In any case the Judge found that in Pakistan the Sponsor would have the support of the Appellant so the question of separation would not arise.
12. The Sponsor's medical issues were fully considered. It was for the Appellant and Sponsor to provide evidence that showed that her medical needs could not be adequately addressed in Pakistan and the Judge was right to observe that there was no such evidence. The fact that the Appellant and Sponsor have assets in the UK that could be used to provide financial security in Pakistan was relevant too.
13. With regard to the Sponsor's ability to live in Pakistan the assertions about the difficulties she would face were unsubstantiated. It is a large country with a range of climates and if the Sponsor can handle the Appellant's variations the suggestion she could adapt to Pakistan was reasonable – there was no evidence she could not.
14. The Appellant's complaints about the decision have no merit and are simply a disagreement with a decision that was open to the Judge for the reasons given. The decision has to be read fairly and as a whole which the grounds fail to do. In the circumstances I uphold the decision of Judge Sills which remains as the disposal of the Appellant's appeal.

CONCLUSIONS

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision.

Anonymity

The First-tier Tribunal did not make an order for anonymity and I make no order.

Fee Award

In dismissing this appeal I make no fee award.

Signed: 

Deputy Judge of the Upper Tribunal (IAC)

Dated: 4th September 2019