



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/12493/2016

THE IMMIGRATION ACTS

**Heard at Field House
On March 25, 2019**

**Decision & Reasons
Promulgated
On April 1, 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MRS NOOR ALIF
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Mr N Bramble, Senior Home Office Presenting Officer
For the Respondent: Mr I Khan, Counsel instructed by SH Solicitors Ltd

DECISION AND REASONS

1. Whilst the respondent is the appellant in these proceedings before me, I hereafter refer to the parties using terminology used in the First-tier Tribunal. The appellant in the First-tier Tribunal will hereafter be referred

to as the appellant in these proceedings and the respondent will be referred to as the respondent.

2. The appellant entered the United Kingdom as a visitor on October 4, 2006 with leave to remain until March 21, 2007. Whilst the dates are unclear it seems that she made an application for indefinite leave to remain, but this was refused on March 20, 2007 probably without a right of appeal. She next applied for leave to remain towards the end of 2014 on the grounds of private and family life, but this was refused on January 9, 2015 again possibly without a right of appeal.
3. On January 4, 2016 she applied for leave to remain, but this was refused by the respondent on May 5, 2016. The appellant appealed that decision on May 13, 2016 under Section 82(1) of the Nationality, Immigration and Asylum Act 2002.
4. Her appeal came before Judge of the First-tier Tribunal James on December 5, 2017 and in a decision promulgated on January 15, 2018 her appeal was allowed on the basis the Judge was satisfied the requirements of paragraph 276ADE(1)(vi) HC 395 were met and the appeal was allowed under Article 8 ECHR.
5. The respondent appealed this decision on January 25, 2018 arguing the Judge had materially erred by:
 - (a) Incorrectly accepting evidence from the appellant's sponsor that there were no care homes available for the appellant without adducing objective evidence to support this claim.
 - (b) Failing to attach sufficient weight to the fact, the appellant owned a home with her brother-in-law in Pakistan.
 - (c) Failed to give adequate reasons for not finding she was simply an overstayer and placing the appropriate weight.
6. Permission to appeal was granted by Judge of the First-tier Tribunal Hodgkinson on May 23, 2018. No reasons were given by the Judge save that permission was given on all grounds.
7. No anonymity direction is made.

SUBMISSIONS

8. Mr Bramble relied on the grounds of appeal as drafted. At paragraph 22 of the decision, the Judge had found that traditional care lay with the family and that care homes were scarce and expensive. Whilst there had been evidence submitted in the appellant's bundle, between pages 55 and 68, he submitted there was nothing in those documents to support the Judge's finding. With regard to the second ground of appeal, he submitted that the sponsors could financially assist the appellant and the appellant herself and had an interest in a property or alternatively, the appellant

could simply go and live in a private care home or stay in the property she had a share in. Finally, he submitted the Judge had failed to give any reasoning why he had found the appellant had not used subterfuge to remain.

9. Mr Khan opposed the application and referred the Tribunal to the evidence provided by the sponsor and the documents contained in the appellant's bundle. The respondent had not provided any evidence to demonstrate that care homes were available whereas the sponsor, supported by documentation that could be found between pages 55 and 68 of the appellant's bundle, had demonstrated there was a lack of care homes for appellants of her age and with her health issues. He submitted the Judge had considered all the issues in a detailed decision and had concluded that care homes were few and far between and that finding was open to the Judge. The Judge gave reasons why he found it would be unreasonable to expect either the sponsor or anybody else to return to Pakistan to look after the appellant and concluded there were very significant obstacles as defined in paragraph 276ADE(1)(vi) HC 395.

FINDINGS ON MATERIAL ERROR

10. Permission to appeal had been granted although in granting permission the Judge did not offer any opinion on the reason for permission being given save that they disclosed arguable errors in law.
11. I found there was no error in law and that the argument advanced by Mr Bramble amounted to a mere disagreement only.
12. The appellant had been married but her husband had died, and the Judge had medical evidence that set out her problems. The Judge considered whether there were very significant obstacles to her return because her daughter lived in the United Kingdom with her own family and there would be no-one to look after her in Pakistan.
13. Contrary to the grounds of appeal and submissions advanced by Mr Bramble, the appellant had provided a bundle of documents and contained within that bundle were several articles that dealt with the care of elderly persons in Pakistan.
14. Articles within the bundle supported the submissions advanced before the First-tier Judge that elderly people in Pakistan were cared for by their families in Pakistan. Articles pointed out there was an "extreme deficiency of health and social care services for the elderly" and it was felt that healthcare providers should start allocating and improvising for the specialised needs of the elderly.
15. A second article contained at page 57 of the bundle confirmed that Pakistan had still not formulated any policy to address the needs of its fast-growing aged population which would touch 45 million by 2025- something confirmed by The UN Population Fund. The Sindh Senior

Citizens Welfare Bill 2014 was still awaiting approval and until a law was passed and promulgated serious social, economic and health problems would continue to rise. Medical care did not recognise geriatrics and there was a lack of residential rehabilitation facilities for the older population.

16. The Judge therefore had material upon which to make the findings that he did. The Judge's conclusions at paragraph 22 of the decision was therefore open to him.
17. The Judge did consider the appellant's share in a property in Pakistan but as Mr Khan pointed out this was not a property that she herself owned but was owned by other family members. It was not straightforward to sell such a property, and, in the circumstances, there would be no funds or insufficient funds available.
18. The final ground raised in the grounds of appeal related to the fact that the appellant came as a visitor and overstayed. That ground overlooks the fact that the Judge was satisfied the appellant met the requirements of paragraph 276ADE(1)(vi) HC 395. The Judge identified very significant obstacles and overstaying would in such circumstances have not been an issue for him on the basis she had met the Immigration Rules and case law suggests that in such circumstances she is entitled to succeed under article 8 ECHR.


DECISION

19. I do not find there is an error of law and I dismiss the appeal.

Signed

Date

27 March 2019



Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT **FEE AWARD**

I uphold the costs decision made by the First-tier Judge

Signed

Date

27 March 2019



Deputy Upper Tribunal Judge Alis