



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

Appeal Number: HU/06134/2019

**THE IMMIGRATION ACTS**

**Heard at Manchester Civil Justice  
Centre  
On 20 March 2020**

**Decision & Reasons Promulgated**

**On 28 April 2020**

**Before**

**UPPER TRIBUNAL JUDGE O'CALLAGHAN**

**Between**

**SHAHEEN JAVAID  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr G Brown, Counsel, instructed by Arshed & Co Solicitors  
For the Respondent: Mr A McVeety, Senior Presenting Officer

**DECISION AND REASONS**

**Introduction**

The appellant is a national of Pakistan and is presently aged 61.

She appeals against a decision of the respondent to refuse her leave to remain on human rights (article 8) grounds conveyed by means of a decision dated 12 March 2019.

The appellant's appeal was initially considered by Judge of the First-tier Tribunal Mather ('the Judge') who dismissed it by way of a decision dated 7

August 2019. The appellant was granted permission to appeal to the Upper Tribunal and her appeal was dismissed by a decision dated 26 November 2019. The appellant sought permission from the Upper Tribunal to appeal to the Court of Appeal on a point of law. I considered that application and by way of a decision dated 23 December 2019 I determined that the Deputy Judge who undertook the error of law consideration had failed to provide adequate reasons and so set aside the decision under rule 43 of the Tribunal Procedure (Upper Tribunal) Rules 2008. In making my decision I observed:

‘Through counsel the appellant made various submissions at the hearing before the Deputy Judge as to why Judge Mather had materially erred in law in considering her difficulties in coping with day-to-day activities and the impact of such difficulty upon her reintegration into life in Pakistan. There are strong merits to the argument advanced by the appellant that the Deputy Judge’s reliance upon [10] of Judge Mather’s decision was a material error as [10(c)] merely refers to the provision of support by family members in the most general of terms and does not engage in any detail with the corroborating evidence relied upon by the appellant resulting in insufficient engagement with such evidence in the paragraph to provide a foundation for the subsequent finding at [21] of Judge Mather’s decision.’

### **Anonymity**

The First-tier Tribunal did not issue an anonymity direction and neither representative requested that I issue one.

### **Background**

The appellant was granted entry clearance as a visitor on 8 July 2009 and entered the United Kingdom with her husband later that month, enjoying leave to enter until January 2010. She overstayed. She claimed asylum in 2015 and the respondent refused this application in September 2015. Her husband died on 14 March 2017. She applied for leave to remain on human rights (article 8) grounds by way of an application dated 4 July 2018 and the respondent’s adverse decision is the subject of this appeal.

The appellant lives with one of her sons, Ahmed Javaid and his family. Another son lives nearby. Her younger sister and brother remain in Pakistan and have families of their own.

The appellant has been diagnosed with several medical conditions including Type 2 diabetes, hypertension and cardiovascular disease. She suffered a heart attack in 2011.

### **Hearing before the FtT**

The appeal came before the Judge sitting at Manchester on 22 July 2019. The appellant was represented by Counsel. In dismissing the appellant’s appeal the Judge reasoned, inter alia:

‘15. I accept the respondent’s submission that the appellant has spent the majority of her life in Pakistan. She does not speak English. She

would have been exposed to the cultural norms of Pakistani society in a significant manner. She understands how life in Pakistani society is carried on and has a capacity to participate in it. Her siblings still live there, and she will be able to access adequate medical treatment. I was not persuaded on the evidence before me that there would be very significant obstacles to her integration in Pakistan.

...

19. With regard to the appellant's mental health condition, she is prescribed sertraline at a standard dose. She is not under specialist care in the United Kingdom. I accept that sertraline is available in Pakistan.
20. The appellant has been accessing free treatment on the NHS despite having no leave to remain since January 2010. I give little weight to the private life established by the appellant in the United Kingdom, as her immigration status has been precarious since then.
21. I am not persuaded that the evidence supports the claimed level of difficulty by the appellant in carrying out activities of daily living.
22. The appellant is 61 years old. She speaks no English. She lived in Pakistan for the majority of her life – she has two siblings still in Pakistan who also have families. She has known that she has had no lawful leave to remain in the UK since 2010 and has taken no steps to leave despite a failed application to regularise her stay. Whilst I appreciate the appellant suffers various medical issues, I am satisfied she will have access to appropriate medication and treatment. I appreciate the appellant derives comfort in visiting her husband's grave and that she will miss her family, who wish to remain in the UK and that loneliness will be a consequence. It is open to her children and grandchildren to visit the appellant and for her also to apply for a visit visa or make whatever application is felt appropriate. They will also be able to access modern technology to keep in contact.
23. I am not persuaded that there are exceptional circumstances in this case to warrant a grant of leave to remain outside the Rules.'

### **Grounds of Appeal**

The appellant relies upon grounds of appeal authored by Counsel that run to three pages. One ground of complaint is identified, though two grounds are actually relied upon, namely that the Judge failed to properly assess the private life claim to remain in this country under paragraph 276ADE(1)(vi) on account of both an inadequacy of reasoning and a failure to properly assess material evidence.

The core of the appellant's contention as to the error of law is identified at [2] of the grounds:

'The Judge has arguably not applied her [consideration] to the central issue as to whether by reason of her physical and mental state, [the appellant] is a person who cannot in fact integrate into any country.'

Further, at [4] and [5] the grounds detail:

'The Judge does not within the body of the evidence set out in any great detail the evidence which was given by the appellant's son and other family members but does record at para 10(c) that the A's son and wife and another son are responsible for supporting the A 'both financially, physically and emotionally' (sic). The Judge at para 21 simply gives no reasons why she rejects the evidence of 'the claimed level of difficulty by the appellant in carrying out activities of daily living.

In terms of A's ability to function in such a way which would allow her to re-integrate in Pakistan without significant difficulties, the psychiatric evidence which was before the Tribunal was both informative and resonant ...'

In granting permission to appeal on all grounds, Judge of the First-tier Tribunal Loke reasoned:

'It is arguable that the Judge failed to give any reasons for his finding at [21] that the evidence did not support the claimed level of difficulty given the evidence of the appellant's son and supporting medical report.'

No Rule 24 response was filed by the respondent.

## **Decision**

At the hearing Mr McVeety candidly accepted that the Judge's reasoning as to the claimed level of difficulty possessed by the appellant in carrying out her activities of daily living at [21] of the decision could not survive for lack of reasoning. He accepted that there had been evidence provided by members of the appellant's family as well as medical practitioners as to her claimed difficulties and whilst in the respondent's view they were not of such nature as to satisfy the requirements of paragraph 276ADE(1)(vi) of the Immigration Rules at the very least adequate reasoning was required if this element of the appeal was to be dismissed. He therefore confirmed that the respondent did not oppose the setting aside of the First-tier Tribunal's decision.

Having considered the papers in this matter, including the witness statements and medical evidence relied upon, as well as the appellant's grounds of appeal, I am satisfied that the concession made by Mr McVeety is a correct one. In considering what is the core of the appellant's case as to her inability to look after herself upon return to Pakistan, and so be unable to integrate, the Judge was required to provide adequate reasons so that the appellant understood the basis to why her account, and the evidence of her witnesses, was rejected: *Save Britain's Heritage v. No 1. Poultry Ltd* [1991] 1 WLR 153. The consideration of the evidence relied upon at [21] details no reasoning, merely rejection. This is a material error of law. For the reasons acknowledged by Mr McVeety the Judge's decision must be set aside.

## **Notice of Decision**

The decision of the First-tier Tribunal involved the making of an error on a point of law and I set aside the Judge's decision promulgated on 7 August 2019

pursuant to section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007.

This matter is remitted to the First-tier Tribunal sitting in Manchester for a fresh hearing before any Judge other than Judge of the First-tier Tribunal Mather.

No findings of fact are preserved

Signed: **D O'Callaghan**  
**Upper Tribunal Judge O'Callaghan**  
Date: 2 April 2020

---

#### NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be received by the Upper Tribunal within the appropriate period after this decision was sent to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is in the United Kingdom at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is 12 working days (10 working days, if the notice of decision is sent electronically).
3. Where the person making the application is in detention under the Immigration Acts, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically).
4. Where the person who appealed to the First-tier Tribunal is outside the United Kingdom at the time that the application for permission to appeal is made, the appropriate period is 38 days (10 working days, if the notice of decision is sent electronically).
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email