



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/07795/2019

**THE IMMIGRATION ACTS**

Heard at Field House  
On 15 March 2021

Decision & Reasons Promulgated  
On 23 March 2021

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

NAZNEEN QAZI  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation**

For the Appellant: Mr B. Malik, Counsel instructed by Farani Taylor Solicitors

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

This has been a remote hearing to which both parties have consented. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. I did not experience any difficulties, and neither party expressed any concern, with the process.

**DECISION AND REASONS**

1. The appellant is a citizen of Pakistan born on 10 July 1955 whose two sons live in the UK.

2. On 14 December 2018 she applied for entry clearance to the UK as an Adult Dependent Relative and under Article 8 ECHR. The application was refused. She appealed to the First-tier Tribunal where her appeal was heard by Judge of the First-tier Tribunal Taylor (“the judge”). In a decision promulgated on 9 January 2020, the judge dismissed the appeal. The appellant is now appealing against that decision.

### **The medical letters from Pakistan**

3. The appellant submitted letters from her family doctor, Dr Fareed, clinical psychologist, Dr Khan, and her psychiatrist, Dr Taj.
4. The letter from Dr Fareed states that the appellant is in “very bad shape physically and mentally” and that:

“I have contacted her psychiatrist Dr Rizwan Taj and we have spoken [at] length about [the appellant’s] well-being and we both agree the only chance of her health improving is through being reunited with her sons in the UK.

Throughout my career as a doctor I have never seen or even heard of a patient suffering with such high levels of OCD, anxiety and depression. [The appellant] is fully dependent for her every day to day tasks and she desperately needs to be close to children who can be around her, care for her day to day needs and provide her with the medical attention she deserves. At [the appellant’s] age she has no other option but to be close to her only two sons in the UK for a chance to improve her health. It is proven mental health patients can show improvement when they are close to family, in a comfortable caring environment.”

5. A letter from Dr Khan states that the appellant has severe OCD and that she is at risk due to declining physical and mental health. It is stated that the appellant is unable to receive “due care” as her father is old and unwell and her brother is unable to cope with her mental status. Mr Khan also states:

“She needs to be looked after well from her basic needs, medication and regular therapeutic sessions. Therefore, it is strongly recommended that [the appellant] should be reunited with her sons as soon as possible for protecting both her physical and mental health.

Evidence from worldwide clinical researchers prove that isolation makes one clinically depressed and vulnerable to various mental and physical illnesses. Being with her children will help in improving her emotional state as each passing day her physical and mental health conditions are worsening”

6. In another letter, Dr Khan states:

“The level of care that she requires is extensive and this is not available to her here as her father is old and unwell while her family of brother is unable to cope with the state. Client is living unaccompanied as carers available are not skilled enough to understand and deal with clients issues while she is unable to look after herself. Also no such facilities are available both in government or private sectors for the management of patients like her.

Being with sons would help improve her mental and emotional state which will result in better physical condition. Her state is likely to deteriorate further if this does not happen”

7. Dr Khan gave the following prognosis:

“Favourable only if get appropriate care, supported by family, medication and regular psychotherapeutic sessions”

8. The letter from Dr Taj states that the appellant has a diagnosis of obsessive compulsive disorder with symptoms of anxiety and depression and that:

“She needs to be close to people she trusts as carers available in Pakistan are not qualified and have no experience of dealing with such problems”.

### **Decision of First-tier Tribunal**

9. The judge considered whether the appellant met the conditions of section EC-DR (entry clearance as an adult dependent relative) of Appendix FM.

10. The judge accepted that the appellant requires long-term personal care to perform everyday tasks and therefore that E-ECDR.2.4 was met. However, the judge rejected the appellant’s claim that she is unable, even with the practical and financial help of her sons, to obtain the required level of care in Pakistan because it is not available and there is no person who can reasonably provide it (the requirement under E-ECDR.2.5).

11. The judge gave the following reasons for finding that the appellant had not established that she was unable to obtain the required level of care in Pakistan:

- a. She did not submit background information or national statistics as to the availability of care for the mentally ill in Pakistan and did not address the background information quoted in the respondent’s refusal letter about care being available.
- b. The report by Dr Fareed did not offer an opinion on the availability of care in Pakistan; and the reports of Dr Taj and Dr Khan dealt only briefly with the availability of care in Pakistan.

- c. Dr Fareed, Dr Taj and Dr Khan expressed the view that the appellant's sons are best placed to care for her, but did not explain how this conclusion was reached. The judge noted, in this context, that the appellant's sons had not visited the appellant in Pakistan for "some considerable time" and the appellant's doctors did not have any evidence as to the ability of the appellant's sons to care for her in the UK.
12. At paragraph 21 the judge stated that Dr Taj provided no background as to what enquiries he had made as to the availability of mental health nurses or carers in different parts of Pakistan and that:

"Dr Taj's department must have support staff as well as psychiatrists, and given that his hospital has a psychiatry department, it is not a plausible proposition to state that there were no carers in the whole country who could assist in the care of a person with severe mental health issues".

13. Also in paragraph 21, the judge stated that:

"Dr Khan's report did not provide any background as to what enquiries and analysis had been carried out to conclude that there were no facilities available to look after the appellant. Dr Khan's notepaper states that she works in several areas of mental health services in Pakistan, and given that mental health services are available I would expect to see some support for the proposition that there was no available care throughout Pakistan, rather than a mere assertion."

### **Relevant Provisions of the Immigration Rules**

14. Paragraph E-ECDR.2.5 of Appendix FM states:

"The applicant or, if the applicant and their partner are the sponsor's parents or grandparents, the applicant's partner, must be unable, even with the practical and financial help of the sponsor, to obtain the required level of care in the country where they are living, because –

- (a) it is not available and there is no person in that country who can reasonably provide it; or
- (b) it is not affordable."

15. Paragraph 35 of Appendix FM-SE provides:

"Independent evidence that the applicant is unable, even with the practical and financial help of the sponsor in the UK, to obtain the required level of care in the country where they are living should be from:

- (a) a central or local health authority;
- (b) a local authority; or
- (c) a doctor or other health professional."

## Grounds of Appeal and Submissions

16. Mr Malik, relying his skeleton argument, advanced four arguments.
17. First, he argued that the judge erred in respect of his assessment of the medical evidence showing the importance to the appellant's health, recovery and care needs of residing in close proximity to her sons. He argued that the medical evidence on this issue was not adequately considered. In particular, he submitted that the judge failed to take into consideration the unanimity between the three doctors that the appellant needs to be with her sons and that there is no real alternative to this. Mr Malik argued that if the appellant's needs cannot be met other than by being near her sons then it follows that her needs cannot be met in Pakistan as her sons are not there. He also submitted that the evidence of the doctors, considered together, could not rationally be dismissed as deserving only little weight. A further point made by Mr Malik was that the judge failed to explain why he accepted the medical evidence on the appellant's diagnosis but not on treatment/prognosis.
18. Second, Mr Malik argued that the judge fell into error by reducing weight given to the opinions of Dr Taj and Dr Khan because they did not provide details of research into care generally in Pakistan when the point the doctors were making was that the appellant needs care provided by her family and there is an absence psychiatric care provision at which the appellant could receive treatment that would address the gap left by the absence of her family members.
19. Third, he argued that the judge erred by inferring from Dr Taj's and Dr Khan's professional role that suitable care would be available in Pakistan. He submitted that the fact that there are psychologists and psychiatrists who can treat the appellant in Pakistan does not mean that there is "live in care" and "home care" for people with mental health problems.
20. Fourth, Mr Malik argued that the judge erred by placing weight on background information quoted in the refusal letter that had not been addressed by the appellant when in the refusal letter no actual evidence was cited and the respondent merely stated that there was "open source information" available.
21. Mr Melvin argued that the judge dealt adequately with the medical evidence and that the grounds of appeal amount to no more than a disagreement with the weight given by the judge to that evidence. He submitted that the conclusions drawn were not irrational or inadequately reasons and therefore there was no basis to set aside the decision.

22. He also submitted that the medical letters did not offer an opinion on treatment/care in Pakistan and there was no evidence that the only option for the appellant was to be with her family in the UK.

### **Analysis**

23. The focus of the grounds of appeal, as well as Mr Malik's submissions, was the approach taken by the judge to the letters of the three professionals in Pakistan who have treated the appellant: Dr Taj, Dr Khan and Dr Fareed. For the following reasons, I cannot discern any error in respect of the judge's approach to this evidence.
24. First, it is clear that the judge took the evidence into consideration. The judge plainly took into account that it was a consensus between the three professionals that the appellant should live with her sons in the UK as at paragraph 9 the judge stated "all the professionals recommended that the appellant should be reunited with her two sons in the UK" and at paragraph 20 the judge stated again that "all three medical reports advise that the appellant should be in the care of sons..." The judge also took into account that both Dr Taj and Dr Khan expressed the view that adequate care was not available in Pakistan. This is plain from paragraph 21 where the judge stated: "the reports of Dr Taj and Dr Khan deal with the question of care..."
25. Second, it is clear that the judge gave reasons to explain why she did not accept the opinions of the professionals on these issues. The reasons are set out, in detail, in paragraphs 20 and 21. In respect of the need to be with her sons in the UK, the judge stated in paragraph 20 that the letters from professionals did not explain how the view was reached that her sons were best placed to look after her, or take account of how long it had been since they had last visited her. The judge stated that the reports do not contain "evidence as to any research or analysis which had taken place in support of this opinion". With respect to the absence of care in Pakistan, in paragraph 21 the judge gave several reasons for rejecting the evidence of Dr Taj and Dr Khan. Amongst other things, the judge noted the absence of "background as to what enquiries [Dr Taj] made as to the availability of mental health nurses or carers in different parts of the country" and that Dr Khan "did not provide any background as to what enquiries and analysis had been carried out to conclude that there were no facilities available to look after the appellant".
26. Third, it was not irrational to infer from the fact that Dr Khan's letterhead states that she works at "a specialised treatment centre" for mental health conditions and that Dr Taj works in a psychiatry department that appropriate care is available. These findings need to be placed in context, which is that the burden of proof lies on the appellant to show that she satisfies the requirements of E-ECDR.2.5 and the only evidence to show care would not be available were the letters from the professionals which did not address the

availability of care (whether at the appellant's home or in a specialised home/centre) in any detail.

27. Fourth, it was not irrational for the judge to conclude that the evidence before him was not sufficient to discharge the burden of showing that the appellant's care needs could not be met in Pakistan, even if that care would be inferior to that which could be provided by her sons in the UK. Another judge might have reached a different conclusion from the evidence but it was not irrational for the judge to reach the conclusion he did.
28. Mr Malik's argument that the judge erred by giving weight to information not disclosed by the respondent (referred to in the refusal letter as "open source information") was not raised in the grounds of appeal and an application to amend the grounds was not made prior to the hearing. For that reason, I declined to consider the point.

### **Notice of decision**

29. The grounds of appeal do not identify an arguable error of law and the decision of the First-tier Tribunal stands.

Signed

*D. Sheridan*

Upper Tribunal Judge Sheridan

Dated: 17 March 2021