IAC-AH-SC-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/20583/2019

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 19th November 2021	**On 4th April 2022**

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

RI
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr R Sharma, instructed by Justin Law Solicitors
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals against the decision of the Secretary of State to make a deportation order against him on the basis that he is a foreign criminal, that decision having been made on 3rd December 2019 to refuse his human rights claim. His appeal against that decision was allowed by the First-tier Tribunal for the reasons set out in the decision promulgated on 2nd March 2020. For the reasons set out in the decision promulgated on 15th October 2020 Upper Tribunal Judge O'Callaghan set aside that decision directing that the appeal be remade at a face to face hearing at Field House.

2. The matter came before me subsequent to a transfer order.

The Appellant's Case

3. The appellant is a citizen of Pakistan born in 1975. He is married to a British citizen ("HA") and entered the United Kingdom in July 2000, being granted indefinite leave to remain in August 2001. The couple have three children aged 20, 16 and 12, the oldest of whom now currently lives in Pakistan.

4. HA underwent a kidney transplant in 2012 and she has, in addition, several other health difficulties.

5. The appellant was convicted with a co-defendant at Isleworth Crown Court in June 2017 following guilty pleas to:

(i) concealing criminal property under Section 327 of the Proceeds of Crime Act 2002; and

(ii) perverting the course of justice.

6. The respondent served the appellant with a notice of decision to deport on 28th December 2017 and signed a deportation order in respect of him on 26th November 2019.

7. The respondent's case is that the appellant is a foreign criminal and that it would not be a breach of his article 8 rights to deport him. She accepted that the appellant had a genuine and subsisting parental relationship with his two younger children but did not consider that it would be unduly harsh for the children to live in Pakistan with him and his wife, given the lack of evidence it would be unduly harsh for them to do so should the parents wish to do so, noting that both parents were of Pakistani heritage and the children would be entitled to live in Pakistan. It was not considered either that it would be unduly harsh for the children to remain in the United Kingdom even were he to be deported. It was accepted also that the appellant had a subsisting relationship with his wife but did not accept it would be unduly harsh for her to remain in the United Kingdom and that whether she relocated to Pakistan would be a decision for her and would not be unduly harsh notwithstanding her medical conditions.

8. The Secretary of State did not consider that the appellant met the requirements of paragraph 399A of the Immigration Rules noting he had not been lawfully resident in the United Kingdom for most of his life nor had he socially and culturally integrated into the United Kingdom, nor would there be severe obstacles to his integration again into Pakistan.

9. The Secretary of State did not accept either that there were very compelling circumstances in his case such that he should not be deported.

The Hearing

10. I heard evidence from the appellant who attended and gave evidence in person. I also heard evidence from HA who gave evidence via a video link, given her vulnerability. In addition, I heard submissions from both representatives.

11. I also had before me the following:-

(i) Appellant's respondent's bundle.

(ii) CPIN: Pakistan: Medical and healthcare provisions, September 2020.

(iii) Appellant's bundle.

(iv) Appellant's supplementary bundle.

(v) Appellant's second supplementary bundle.

(vi) The Skeleton Argument from Mr Sharma

The Hearing

12. The appellant adopted his witness statements and whilst, adding that his son is now living in Pakistan with his (the appellant's) mother. He said he could not go to live in Pakistan because his wife has kidney problems, no decent doctors and she could not get proper treatment. He said that his older brother helps the son financially but it would be difficult for him to help him or his older brother to help him if he went back to Pakistan. He said there might be help for a week or so but after that not. The appellant said that friends and relatives had abandoned him since the conviction.

13. He said that his wife's mother who had helped her in the past would not be able to do so now, she is nearly 65, does not work and that two of her brothers were unable to help: one has cancer, the other one is a paranoid schizophrenic, then the other two have their own families and children to look after.

14. The appellant said that he helped his wife in every way taking her to medical appointments of what is needed, takes the children to school and brings them back, provides help in the house when she needs medicine as, after taking it, she becomes intoxicated and drowsy and she has to rest for two hours or so. She said that nobody else would be able to help out in the household. It would be difficult to keep in contact via electronic means.

15. The appellant said that going to live in Pakistan would have an adverse effect on the children's education and they are not able to read and write Urdu. He would not be able to afford to send them to an English medium school.

16. Cross-examined, the appellant said that he used to make films in Pakistan before he came here but it was a long time since he had done so. It would

be very challenging for him to find that work as he no longer has the connections with the right people which is necessary. He said that since coming to the United Kingdom he has worked in a chicken factory and at McDonalds, but also working in a factory where they make fans, in a laundrette and in a supermarket. He said it would be hard to find work if he returned to Pakistan.

17. The appellant said that his wife's family and his family live in the same area of Pakistan, a village in Azad, Kashmir about half an hour car from the nearest large town, Mirpur. He said there was a hospital there but the bigger hospitals were some distance away in Lahore and Islamabad. The appellant confirmed that his elder brother and their mother live in the same house, which is where three of his brothers live in the United Kingdom, one of whom was sitting in court with him; the other lives in Pakistan. He said that those that live in England live nearby in Slough. Asked if they could not help out with his family if he had to return to Pakistan, he said that everyone in this country minds their own business and have their own families to see to.

18. The appellant had said that his daughter is not currently working or studying and that both the younger children had visited Pakistan in the past for about three to four weeks on three to four occasions. He said his wife had been back on a few occasions, the longest period being some five or six weeks during the holidays. He said he had not kept an account of the time that his wife is so tired that she is not able to do everyday tasks after taking medication, adding that it does not happen every day but she gets fatigue and has pains in her legs. He was not sure which of her medication had this effect. He said he was not literate or educated and so he takes out the medication and gives it to her according to what she tells him to do.

19. The appellant said he did not know why the social worker thought his wife spent most of the day sleeping and denied having exaggerated the extent of her medical condition. He said that it would not be fair of his wife's medical condition to support the appeal. He said that his daughter stays in her room, I thought she had been to see a doctor about this. She said he thought she had been to the hospital. When asked further he said that she had been assured that she had been on one occasion, that she had become unwell just sitting and staying in her room.

20. In re-examination the appellant said his wife's medication was taken at fixed times, morning and evening and that it was both morning and evening medication which had caused side effects. As to why the social worker's report referred to his daughter wanting to get further education, he said he was not sure why she had changed but she just keeps herself in her room and does not tell anything or say anything.

21. I then heard evidence from HA. It transpired that she had in fact been present during her husband's evidence. She adopted her witness statements adding that her husband cooks the food, looks after the

children, does the hoovering and tidies the house and that she dozes off after taking medication. She confirmed that she had pain in her legs and that it was her mother who had looked after her and the children when the appellant had been in prison. She said that her mother is old, has diabetes, high blood pressure and currently lives with her (Mrs Almema's) older brother. She said that her four brothers would not be able to help nor could her daughter. She does not do any cleaning, does not know how to cook and at 16 does not know how to do anything. She said that the problem with her kidneys was affecting her legs.

22. HA said that she had been to Pakistan since the transplant maybe two or three times for about four weeks but had taken her medication with her. She said she would need to take medication for the rest of her life. She said that her daughter stays in her room all the time, does not talk to anyone about her feelings and just does not go out.

23. In cross-examination HA said that she sometimes goes to hospital for regular reviews and when taken to hospital has been given antibiotics. She said that her husband's brothers could not help and that when he had been in prison they had just occasionally come round to ask how she was, spending no more than a few minutes. She said that her daughter had not gone to the doctor but had gone to A&E who had said that she was not drinking enough water. She was not doing enough exercise and is not eating enough. Asked why the social work report said that she spent most of the day sleeping she said she did not remember and that maybe she used to sleep a lot more. Asked why she had told in re-examination why she had said she had spent long periods in bed for six months and in February 2020 had told the social worker she spend a lot of time in bed, she said maybe she had a lot of sleep at the time and her memory was not that good, she did not used to get pains and she now had high blood pressure.

24. In response to my questions HA said that she had been suffering from pains in her legs since maybe when lockdown started. She did not know which medication caused her to be drowsy but thought it was one of the kidney medications but she had not told the kidney specialist about this, she did not think it would affect that. She said she had told them about her pain, they had not told the GP.

25. Mr Lindsay submitted that the appellant and his wife had exaggerated her conditions particularly in the side effects, in order to support the appeal. He submitted that there was no indication in the medical notes of the significant side effects or of her leg pains and there was inconsistencies in what had been told by the social worker. He submitted that the appellant's credibility was in question given his conviction for perverting the course of justice.

26. Mr Lindsay submitted also it would not be unduly harsh to expect the wife and children to go to Pakistan given that the oldest son had gone back to live with the family, that both of them had extended family in the same

area of Pakistan and could expect substantial family support on return. He submitted there was no reason why they could not sell the family house in the United Kingdom to finance themselves in the United Kingdom. He submitted further that there was nothing reasoned why the younger children would not have the benefit of having their older sibling and extended family who are not at a critical stage in their education.

27. It is submitted that the appellant could find a job on return and that in any event healthcare would be available for the wife, although it would not be of the same standard as in the United Kingdom. He submitted further that even if the family chose to remain then the separation would not be harsh and they could have long visits as they had done in the past. Family support would be available and there is no reason why the appellant's brothers could not help again as they had in the past.

28. Mr Sharma submitted that HA's suffering from drowsiness sometimes was consistent with her medication and noted that Judge O'Callaghan had identified some difficulties with the social worker's report. He submitted that the family life was genuine, it was plausible that HA relies on him and that he would have adopted the role as a carer. He submitted that Section 11 of the report from the social worker was not such as would be a basis not to accord weight to it and that the older son now in Pakistan had provided evidence that it was difficult for him to fit in and that he would not be able to support the family. He submitted that there would in this case be a significant difficulty for the HA, who was a British citizen and so a relevant factor in assessing undue harshness I was expecting her to leave the United Kingdom. It was submitted it would harsh to expect the family to go to Pakistan and that if the appellant goes there the children would have to go and the unit needs to be treated as a whole. He submitted the circumstances in this case of a family split would be unduly harsh.

The Law

29. Section 117C of the Nationality, Immigration and Asylum Act 2002 provides as follows:

> "117C Article 8: additional considerations in cases involving foreign criminals
>
> (1) The deportation of foreign criminals is in the public interest.
>
> (2) The more serious the offence committed by a foreign criminal, the greater is the public interest in deportation of the criminal.
>
> (3) In the case of a foreign criminal ("C") who has not been sentenced to a period of imprisonment of four years or more, the public interest requires C's deportation unless Exception 1 or Exception 2 applies.
>
> (4) Exception 1 applies where—

(a) C has been lawfully resident in the United Kingdom for most of C's life,

(b) C is socially and culturally integrated in the United Kingdom, and

(c) there would be very significant obstacles to C's integration into the country to which C is proposed to be deported.

(5) Exception 2 applies where C has a genuine and subsisting relationship with a qualifying partner, or a genuine and subsisting parental relationship with a qualifying child, and the effect of C's deportation on the partner or child would be unduly harsh.

…

(7) The considerations in subsections (1) to (6) are to be taken into account where a court or tribunal is considering a decision to deport a foreign criminal only to the extent that the reason for the decision was the offence or offences for which the criminal has been convicted."

30. The Immigration Rules provide, so far as is relevant, as follows:

398. Where a person claims that their deportation would be contrary to the UK's obligations under Article 8 of the Human Rights Convention, and

(a) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of at least 4 years;

(b) the deportation of the person from the UK is conducive to the public good and in the public interest because they have been convicted of an offence for which they have been sentenced to a period of imprisonment of less than 4 years but at least 12 months; or

(c) the deportation of the person from the UK is conducive to the public good and in the public interest because, in the view of the Secretary of State, their offending has caused serious harm or they are a persistent offender who shows a particular disregard for the law,

the Secretary of State in assessing that claim will consider whether paragraph 399 or 399A applies and, if it does not, the public interest in deportation will only be outweighed by other factors where there are very compelling circumstances over and above those described in paragraphs 399 and 399A.

31. Paragraph 399 and 399A provide:

This paragraph applies where paragraph 398 (b) or (c) applies if –

(a) the person has a genuine and subsisting parental relationship with a child under the age of 18 years who is in the UK, and

(i) the child is a British Citizen; or

(ii) the child has lived in the UK continuously for at least the 7 years immediately preceding the date of the immigration decision;

and in either case

(a) it would be unduly harsh for the child to live in the country to which the person is to be deported; and

(b) it would be unduly harsh for the child to remain in the UK without the person who is to be deported; or

…

32. With respect to Section 117C and paragraph 398 of the Immigration Rules the key issue here is undue harshness. The law on this is summarised in TD (Albania) [2021] EWCA Civ 619 at [20]ff:

20. In *KO (Nigeria)*, Lord Carnwath, with whom the other members of the Supreme Court agreed, explained the nature of the test of undue harshness:

"23 On the other hand the expression "unduly harsh" seems clearly intended to introduce a higher hurdle than that of "reasonableness" under section 117B(6), taking account of the public interest in the deportation of foreign criminals. Further the word "unduly" implies an element of comparison. It assumes that there is a "due" level of "harshness", that is a level which may be acceptable or justifiable in the relevant context. "Unduly" implies something going beyond that level. The relevant context is that set by section 117C(1), that is the public interest in the deportation of foreign criminals. One is looking for a degree of harshness going beyond what would necessarily be involved for any child faced with the deportation of a parent. What it does not require in my view (and subject to the discussion of the cases in the next section) is a balancing of relative levels of severity of the parent's offence, other than is inherent in the distinction drawn by the section itself by reference to length of sentence…"

21. The appeals in *HA (Iraq)* arose from decisions of the Upper Tribunal giving guidance on the application of *KO (Nigeria)*. The decision of this court underlined that what is required in all cases is an informed evaluative assessment of whether the effect of deportation on a child or partner would be unduly harsh in the context of the strong public interest in the deportation of foreign criminals. The leading judgment of Underhill V-P contains these passages:

"51 … The underlying question for tribunals is whether the harshness which the deportation will cause for the partner and/or child is of a sufficiently elevated degree to outweigh that public interest in the deportation of foreign criminals."

"53 … It is inherent in the nature of an exercise of the kind required by section 117C(5) that Parliament intended that

> tribunals should in each case make an informed evaluative assessment of whether the effect of the deportation of the parent or partner on their child or partner would be "unduly harsh" in the context of the strong public interest in the deportation of foreign criminals; and further exposition of that phrase will never be of more than limited value."
>
> "56 … if tribunals treat the essential question as being "is this level of harshness out of the ordinary?" they may be tempted to find that Exception 2 does not apply simply on the basis that the situation fits into some commonly-encountered pattern. That would be dangerous. How a child will be affected by a parent's deportation will depend on an almost infinitely variable range of circumstances and it is not possible to identify a baseline of "ordinariness". Simply by way of example, the degree of harshness of the impact may be affected by the child's age; by whether the parent lives with them (NB that a divorced or separated father may still have a genuine and subsisting relationship with a child who lives with the mother); by the degree of the child's emotional dependence on the parent; by the financial consequences of his deportation; by the availability of emotional and financial support from a remaining parent and other family members; by the practicability of maintaining a relationship with the deported parent; and of course by all the individual characteristics of the child.
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> 57 … Tribunals considering the parent case under Exception 2 should not err in law if in each case they carefully evaluate the likely effect of the parent's deportation on the particular child and then decide whether that effect is not merely harsh but unduly harsh applying *KO (Nigeria)* in accordance with the guidance at paras 50—53 above."
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> 22. The decision in *HA (Iraq)* does no more than explain that what is required is a case-specific approach in which the decision-maker addresses the reality of the child's situation and fairly balances the justification for deportation and its consequences. It warns of the danger of substituting for the statutory test a generalised comparison between the child's situation and a baseline of notional ordinariness. It affirms that this is not what *KO (Nigeria)*, properly understood, requires.

33. I note, as Mr Sharma submitted, that permission to appeal to the Supreme Court had been granted in HA (Iraq) but I am not satisfied that that is a sufficient reason why I should not follow it.

34. It is, in analysing this case, best to start with a consideration of HA's health. That is not to say that the children's best interests are to be subordinated to that, but the impact on them of going to Pakistan or remaining in the United Kingdom without their father is clearly affected by their mother's ability to look after them which, in turn, involves making findings about her health.

The Appellant's Wife's Health

35. There is a substantial amount of material relating to the wife's medical problems in the form of medical notes and a smaller number of letters from treating physicians. I accept from this material that she has type 2 diabetes and has had a kidney transplant, as a result of which she will need to take immunosuppressant drugs for the rest of her life. She also suffers from high cholesterol, high blood pressure and most recently her eyesight has been affected as a result of the diabetes, requiring operations in an attempt to save her sight which is impaired in both eyes.

36. I accept also from the documents provided that she has had numerous, regular consultations with her GP and regular reviews with kidney specialists. It is aliso relevant that she has regular blood tests and investigations in connection with her various conditions and to monitor kidney function post-transplant.

37. In terms of medication, it is evident that she has been prescribed with insulin to be injected according to requirements using pre-filled disposable injectors. While I accept it may well be the case that the drugs she has been prescribed cause tiredness and fatigue, there does not appear to be any record of that in the notes disclosed nor for that matter the pains in her legs to which she refers both in evidence before me and in what she said to the social worker.

38. HA could not say which drugs she thought caused her drowsiness. She said she had not raised this with any of the specialists she sees, explaining that she just thought it was to be expected from what others had told her.

39. I have no doubt that HA's conditions require careful calibration of a number of medications, which may well interact with each other. The drugs may also have side effects, and it would be surprising if the specialists monitoring her were not concerned about these issues and there is some evidence from the medical notes that this is so. There is a comment about tiredness is on 11th February 2020. It appears that HA had stopped taking Ramipril by herself thinking high blood pressure and tiredness are related to that. She did, however, re-start on that. It is also evident from the comments on 17th January 2020 that some drugs, in this case Nifedipine, was stopped owing to her developing gum hypertrophy. It is also evident from the notes on 15th April 2019 that foot and leg sensations have been examined and discussed and other problems with the leg (15th October 2018) have been discussed. Thus, it is evident that she has raised side effects and her medication has been adjusted

40. There is insufficient evidence that HA has raised with any of those treating her the tiredness lasting for two or three hours after taking medication, confining her to the house and impacting significantly on her wellbeing. The letters from the GP add little by way of evidence of difficulties HA has in everyday tasks. There is a letter from a consultant neurologist stating that HA dependent is on her husband for support, that is physical, emotional, psychological and financial and the observation in the letter at 19th February 2020 that medication can cause low blood pressure, low

blood sugar, thus indirectly causing tiredness and drowsiness which may affect day-to-day activities, there is nothing specific.

41. While it may have been sensible for HA to have raised with those treating her that she suffers from drowsiness caused by the medication – which she says makes her take to her bed for several hours a day - she did not. It does not necessarily follow that this detracts from her credibility. On any view, she has had to live while suffering from multiple health problems, including kidney disease before the transplant, and is facing the possible loss of her sight. There are indicators in the material that she has not engaged as best she might with the diabetes service. She has to monitor her blood sugar, and to take insulin on a regular basis. In addition, she has two children to care for.

42. It is submitted that the difficulties HA faces have been exaggerated and that this casts doubt on the reliability of the evidence of the appellant and his wife, HA and that her evidence that she has to sleep for 2 to 3 hours after taking medication is inconsistent and inconsistent with what was said to the social worker.

43. With regard to the latter, I accept the explanation given by HA that she was confused. Without knowing exactly what was said, and as having to take to one's bed for 2 to 3 hours more than once a day is not entirely inconsistent with spending most of the day in bed, I attach little weight to this difference. Given also the apparent failure to engage always with the help offered, it does not follow that any failure to seek help for the drowsiness is because it does not exist. Had HA wanted to confect a claim to that effect, there would have been nothing to stop her from stating this to her doctors, and viewing the evidence as a whole, I am not satisfied the tiredness is exaggerated to the extent that it undermines credibility.

44. I accept, as it is supported by the letters from the doctors, that she had to take her medication with her to Pakistan. The level of care she would get there is unlikely to be of the same level, even in a major city, as that to which she is entitled as a British Citizen in the United Kingdom either in terms of the monitoring of her various conditions, the follow-up from the transplant, or most recently the monitoring of her retinopathy which impairs her sight.

45. The appellant's wife does, I accept, have extended family in Pakistan, but she would have to adjust to a new lifestyle with the added impairment of her sight which, on the evidence before me, has arisen since her last visit there. There would, inevitably, be stress involved in having to engage with a new set of treating doctors, and the worry (which I accept) that the treatment would not be as good as HA receives in the UK.

The Children

46. I find that the children's best interests are to remain with their parents and, I consider, in the United Kingdom. In reaching that conclusion I note

that they both speak Punjabi at home with their parents as the appellant has said, but equally, and I note, that they have extended family in Pakistan. But it is significantly different to have been born and grown up in the United Kingdom up to the ages respectively of 12 and 16 and then to go and live in an entirely different country and encounter an entirely different school system or education system. I note that the daughter has ceased to attend school and neither works nor is in education.

47. There is some support for the difficulties that the children would be face in going to live in Pakistan from the social work report albeit that there are issues with the report. At Section 11 of the report the social worker had asked to consider "do you consider there to be a disproportionate breach of family life pursuant to Article 8 of the ECHR".

48. Aside from the fact that this is not a point that should ever had been put to an expert, it is inappropriate to make comments on the proportionality of deportation on the facts of this case. This gives a significant indicator that the social worker is acting as an advocate rather than an expert at least in respect of that section.

49. At Section 10 of the report it is recorded that the daughter had had to assist more than the mother and that it is likely that the children would become carers for their mother if the appellant were to be removed. Noting the consequence of this, the social worker said:

> Research has consistently revealed that negative impact can occur across the personal, health, educational and employment aspects of a young carer's life. This could include a reluctance to the leave the family home, reduced opportunities to participate in social and leisure activities and a reluctance to disclose their situation for fear of judgment or the young person being taken into care. Young carers are typically more mature than they appear which can lead to a sense of isolation. Young carers may feel unworried about their own needs being neglected. (scie.org.uk, 2020).
>
> The view is also that families with uncertain immigration status are particularly vulnerable to social exclusion and isolation. Fearful about seeking support of services outside of the family. (scie.org.uk, 2020).
>
> Therefore the appellant's deportation would mean the children would be forced to grow up quite quickly and adopt a more responsible role as a carer towards their mother. There are many younger carers in the UK but they miss out a lot of their childhood as a result of this. Whilst there are organisations who offer support for young carers, this is a role that children should not have to take on and would not need to if their father remains in the UK.

50. At Sections 12 and 13 the social worker considered the mental effect that the appellant's deportation and separation would have on the children but the extent to which they have suffered trauma is speculative:

> "S is likely to have experienced some level of trauma due to his father being in prison and therefore being forced to separate from him. Thus for a period of months, S felt the need to keep it a secret because he witnessed what his friend was going through and did not the pressure of his peers questioning

> about his father. It is therefore very likely that should the appellant leave the UK S would have to relive the experience all over again, which undoubtedly would have a negative impact on him psychologically and emotionally. She then goes on to opine that the children may suffer depression and traumatic stress and might lead to devastating outcomes. E is recorded as saying that there was a language barrier to her education, she cannot read and write or speak Urdu, education in Pakistan putting them at risk of ill-treatment from teachers. S stated he did not wish to leave the United Kingdom saying he would miss family and friends. E also raised concerns around gender explaining as a female living in Pakistan she would fall out of education because there is no emphasis for girls to study and moving to Pakistan would make her feel oppressed because girls do not have the same opportunities as their male counterparts."

The Support Available in Pakistan

51. The appellant's and his wife's evidence is that support would not be available for them on return to Pakistan. That is despite the fact the older son has gone back and has been supported for an indeterminate period. Both the appellant and his wife have extended family in the same area and I consider that this has been that the lack of support has been exaggerated. When asked directly why there could not be help from relatives in the United Kingdom as either, the answers – that you cannot expect to be supported – are evasive, and I do not accept that is correct.

Help Available from Relatives

52. I accept that the appellant's mother-in-law is 65 and that she is concerned with caring for her son who has cancer. That was not seriously challenged. But there is no direct evidence from the brothers who are not unwell. Nor is there evidence from the appellant's brothers, one of whom was able to accompany him to court; there is not even a single letter for any of them explaining why they cannot provide help.

53. There is no independent evidence of any difficulties that the daughter may be facing in terms of her remaining in her room and suffering from some unspecified illness. There is some evidence of her understandable anxiety while her father was in prison, and this is noted in the social work report.

54. I accept that the appellant's daughter is 16 and at home, neither working nor in education that she would be able to assist with caring for her mother. The mother's evidence that the daughter is not capable of doing anything around the house seems exaggerated and somewhat inconsistent with what was said to the social worker, but that was in a different context and prior to an extended period of lockdown. It is far from impossible that the daughter's mental health has been impaired.

55. I accept that it would be very difficult given the multiplicity of HA's medical complaints for her to live in Pakistan. Whilst I accept that some of the drug treatment may be available to her, it would inevitably cause her

significant upset and discomfort to have to travel and pay for this aside from any lack of continuity of care.

56. I am not, however satisfied that she needs her husband (as opposed to anyone else) to assist her in taking medication given that their evidence is that she tells him what to give her. It is not said she could not take the pills prescribed, cannot carry out blood sugar tests or cannot administer the insulin prescribed which comes in the form of self-injectors.

57. I am satisfied that as the judge in the First-tier Tribunal noted, HA gets support form her husband. There is no doubt that the relationship is a genuine and long-lasting one. It may well be that she is capable of looking after herself physically with the assistance of her daughter, son, brothers and brother-in-law, but it is difficult to expect the latter to be there constantly to assist with medication and round the house. Certainly, none of these could reproduce the emotional support and bond between husband and wife.

58. For these reasons, and taking all of these factors into account, I am satisfied that it would be unduly harsh to expect HA to go to live in Pakistan for the foreseeable future given her multiple health problems, but that does not mean she is unable to visit her husband there, she has visited Pakistan in the past, and has been able to take the necessary medication with her. Similarly, I am not satisfied that the children would be unable to visit their father in Pakistan and indeed have extended family there. They have visited on several occasions in the past for extended periods.

59. But, the effect of deportation here would be to separate for long periods of time, a husband and a wife who has multiple health problems and faces sight loss, something I think it fair to note would cause great distress and increases her dependency.

60. Accordingly, I am satisfied that, viewing the evidence as a whole, that on the particular facts of this case, it would be unduly harsh for the appellant's wife to remain here, without her husband.

61. I further, consider it would be unduly harsh to expect the appellant's daughter to go to live in Pakistan given that as a young, British woman at the age of 16 she has lived all her life here albeit in a Pakistani ethnic community and the letter is a long way from having to go and live with the restrictions that she would face in rural Pakistan or for that matter in a large city.

62. Accordingly, for these reasons, I find that the appellant does meet the requirements of the Immigration Rules and Exception 2 set out in Section 117C of the 2002 Act. . It is not submitted that the appellant meets Exception 1.

63. In the circumstances, it is unnecessary for me to consider whether there are very compelling circumstances over and above those described in Exceptions 1 and 2.

64. Accordingly I allow the appeal on human rights grounds

Notice of Decision

(1) The decision of the First-tier Tribunal involved the making of an error of law and set it aside.

(2) I remake the appeal by allowing it on human rights grounds.

(3) I maintain the anonymity order made by the First-tier Tribunal.

Signed Date 1 December 2021

Jeremy K H Rintoul
Upper Tribunal Judge Rintoul