IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-001799
UI-2022-001808
First-tier Tribunal No:
HU/18147/2019
HU/18150/2019

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 12 April 2023

Before

UPPER TRIBUNAL JUDGE LANE

Between

AQSA TANVIR
MUHAMMAD HASSAN
(NO ANONYMITY ORDER MADE)

Appellant

and

Entry Clearance Officer

Respondent

Representation:
For the Appellant: Ms Barton
For the Respondent: Mr Bates, Senior Presenting Officer

Heard at Manchester Civil Justice Centre on 24 February 2023

DECISION AND REASONS

1. The appellant is a citizen of Pakistan aged 66 years. She lives in Manchester with her daughter. On 17 June 2019, the appellant made an application for leave to remain in the UK on the basis of her family and private life. The application was refused by a decision of the Secretary of State dated 18 October 2019. The appellant now appeals, with permission, to the Upper Tribunal.

2. The appellant has been in poor health and has been treated for cancer. She is divorced and currently has no partner.

3. The judge found that the appellant is in remission from cancer and is not under imminent threat of death. He found that the appellant had entered as a visitor and had subsequently received private medical treatment. He found that the appellant has a brother and other family members living in Pakistan who would

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be able to accommodate and care for her and that she could receive appropriate medical treatment there. He found that the appellant would receive financial support from family members in the United Kingdom and Pakistan.

4. Ground 1 is without merit. It asserts that the judge fell into material error by not stating the standard and burden of proof. Whilst that is strictly correct, it is not arguable that the judge has adopted an incorrect approach in the analysis of the evidence or application of the relevant law. I agree with Mr Bates that the judge has adopted a structured method, rejecting (as he had no alternative to do) any claim that the appellant satisfies the requirements of the Immigration Rules and then examining whether there are exceptional circumstances which would engage an assessment of human rights outside the Rules. Given his adoption of that correct method, there is no reason at all to suppose that the judge applied an inappropriate standard of proof.

5. Ground 2 is also without merit. It is simply not correct to say that the judge failed to consider the relevant parts of HC 395 (as amended), in particular paragraph 276ADE. He has expressly done so at [47], applying the relevant parts of the rule to the facts of the appellant's case as he found them. The grounds assert that the consideration is inadequate but fail to indicate why. The assertion that the decision is flawed because 'there is nothing at all with regard to the law/case law' [12] is not arguable. The judge has applied the relevant legal principles; that he chose not to cite the authorities containing those principles is immaterial. Finally, the assertion that 'in particular there is a document from the NHS, page 19, that clearly documents the fact that a return to Pakistan is likely suffer from "substantial shortening of life", which needs to be considered with reference to the relevant case law and Article 3.' is baseless. The judge did consider Article 3 ECHR and, on the evidence, reached the conclusion available to him. The NHS document (a letter from a Clinical Oncologist) at [19] of the appellant's bundle of documents (see grounds at [12]) states that 'if [the appellant] were to suffer further recurrence [of her illness] she may well up *(sic)* with incurable disease and substantially shortening of life'. That evidence is subject to contingencies such that it comes nowhere near the threshold of Article 3 ECHR (see *AM (Zimbabwe)* [2020] UKSC 17). On any consideration of the facts, the appellant cannot succeed under Article 3 ECHR so even if the judge has erred (and I do not accept that he has) the outcome would be the same in any event.

6. The previous observation disposes of part of Ground 3 also. The assertion in Ground 3 [15] that 'there are numerous NHS documents, which are professional opinion on the A health which are somewhat ignored [by the judge]' does not advance the appellant's case given that the medical evidence could not establish Article 3 ECHR grounds. Moreover, the fact that the judge did not refer to each and evert item of evidence is immaterial. There is nothing in the decision to indicate that the judge failed to have regard to all the evidence, both oral and documentary; indeed, the grounds do not seek to identify any specific document which has (i) not been considered by the judge (ii) even if it had not been considered, that its contents should have made a material difference to the outcome of the appeal. Further, the judge was entitled to assess and weigh each item of evidence and to reach findings of fact. Ground 3 makes clear that the appellant did not agree with that assessment but that disagreement, in the absence of any legal error on the part of the judge, does not vitiate it.

7. In her oral submissions, Ms Barton focussed on the reasons given by Judge Elliott for granting permission. At [5], Judge Elliott wrote:

> However the Judge has failed to explain his finding at paragraph 52 that Article 8 is not engaged, given his finding at 51 that the appellant had developed both family and private life in the UK, nor has he provided any explanation for his finding that the respondent's decision was proportionate. That failure represents an arguable error of law

8. At [51-52] of his decision, the First-tier Tribunal judge wrote:

> **51. Will the proposed refusal of leave to enter the UK by a public authority interfere with the exercise of the applicant's right to respect for his private or (as the case may be) family life?** I find that the Appellant has developed a family and private life in the UK. It has been done for periods of time when the Appellant did not have leave to be in the UK and had been refused further permission to remain. The Appellant would prefer to remain in the UK for the remainder of her period when she is to be under medical observation, which amounts to another two years or so. If her condition remains in abeyance, it appears that there would be no basis for her to seek to remain.
>
> **52. If so, will such interference have consequences of such gravity as potentially to engage the operation of Article 8?** The interference must be more than a technical or inconsequential interference with one of the protected rights for Article 8 to be engaged, according to VW (Uganda) v SSHD [2009] EWCA Civ 119. In this case I find that the refusal does not constitute such an interference, and Article 8 is not engaged.

9. Read out of context, the reasoning of the judge at [51-52] may appear a excessively brief. However, [51-52] represent the application by the judge of the relevant law (here, the familiar guidance of *Razgar* [2004] UKHL 27) to his detailed findings of fact at [31-48]. There was no need for the judge to repeat each finding as he worked through the *Razgar* template. Further, there is no inconsistency in the judge answering the first *Razgar* question ('*Will the proposed refusal of leave to enter the UK by a public authority interfere with the exercise of the applicant's right to respect for his private or (as the case may be) family life?*') in the affirmative but answering the second ('*If so, will such interference have consequences of such gravity as potentially to engage the operation of Article 8?'*) by stating that 'in this case I find that the refusal does not constitute such an interference, and Article 8 is not engaged.' Indeed, the second question would be superfluous if every case which leads with an interference with the exercise of an individual's private or family life was automatically deemed to engage Article 8 ECHR.

10. In my opinion, none of the pleaded grounds succeed in identifying any error of law in the First-tier Tribunal's decision. It was open to the judge to make the findings of fact on the evidence. Accordingly the appeal is dismissed.

<u>Notice of Decision</u>

The appeal is dismissed.

C. N. Lane

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 24 February 2023