IAC-AH-PC-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/03993/2014

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 18 February 2015	**On 26 February 2015**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

FAHMIDA BEGUM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Thathall, UK Immigration Law Chambers
For the Respondent: Mr Diwnycz, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Fahmida Begum, was born on 3 June 1956 and is a female citizen of Pakistan. The appellant arrived in the United Kingdom on 6 March 2013 as a family visitor. She claimed asylum but her application was refused on 31 May 2014 when a decision was also made to remove her from the United Kingdom by way of directions under Section 10 of the Immigration and Asylum Act 1999. The appellant appealed against that decision to the First-tier Tribunal (Judge Hillis) which, in a determination

promulgated on 12 September 2014, dismissed the appeal. The appellant now appeals with permission, to the Upper Tribunal.

2. I am satisfied that the grounds of appeal at paragraphs [1] – [4] amount to no more than a disagreement with the findings of the judge. There is nothing in the judge's determination to indicate that he did not consider all the evidence in reaching his determination and I can identify no error of law in the manner in which he treated the appellant's own written evidence. The focus of the appeal before me at Bradford on 18 February 2015 was what Judge Hillis says in his decision at [33]:

> There is before me a letter from Dr Britto consultant psychiatrist at Britto Psychiatry Limited addressed to Dr Mughal at Mughal Medical Centre dated 26 July 2014. It is signed by Dr Britto and states that he is a consultant psychiatrist at the BMI Huddersfield Hospital and Cygnet Hospital Bierly. It is conceded by both parties to this appeal that it is not a formal report and I note here that it was not addressed to the Tribunal, it does not contain a required declaration that he is aware of his duty to the Tribunal to be independent and does not provide a detailed list of his qualifications and experience. There is no indication on the face of the letter the doctor is aware that this letter has been served in support of the appellant's application or that it is intended for use in any court proceedings. I, therefore, place no evidential weight on its contents.

3. Mr Thathall, for the appellant, submitted that the judge was wrong to have placed *no* weight on the report. The letter in question is dated 26 July 2014 and follows on from a number of previous letters from the same doctor. I note from the letter that Dr Britto found that the appellant "appeared less bemused and bewildered as compared to previous occasions." She told the doctor that she could not look after herself. Dr Britto reiterated his previous advice that the appellant required care and support from either family members or in a residential setting. He noted that "her mental state and capacity fluctuates and thus there are times when she is not capable of providing information in relation to any potential proceedings."

4. Factually, the judge's observations at [33] are accurate. The letter from Dr Britto does not contain any declaration as to his independence or duty to the Tribunal. However, it is clear that the previous letters, written in a similar form, from the same doctor had been accepted by a previous Tribunal. Whilst I accept that the judge may, for the reasons which he has given, have placed limited weight on the document the indication in his determination is that he has ignored it entirely, having placed "no evidential weight on its contents." I consider that may have been an error of law. However, I retain a discretion as to whether I should set aside a decision of the First-tier Tribunal and, in this instance and notwithstanding the manner in which the judge has treated Dr Britto's report, I decline to exercise that discretion by setting aside the determination. I say that for the following reason. This is a "medical" Article 3/Article 8 ECHR case. The judge noted [26] that the appellant's claim did not engage the Refugee Convention or Qualification Directive. There was also no

suggestion that the appellant met the requirements of the Immigration Rules (in particular, paragraph 276ADE of Appendix FM). Further, the appellant does not appear to suggest that her medical condition is such as to engage the high threshold of **N [2005] UKHL 31**. As I have noted above, Dr Britto in his letter of 26 July 2014 noted that the appellant's condition had improved. She had no suicidal ideation. The conclusion of his letter does no more than suggest that her oral evidence (if she were required to give it at the forthcoming First-tier Tribunal hearing) might be affected by her medical condition. The doctor did note that there was some evidence of self-neglect and poor motivation and that she had also suffered from severe depressive episodes in the past. However, as the recent decision in the Court of Appeal of **GS (India) [2015] EWCA Civ 40** reiterates, where a medical condition does not justify leave under Article 3 ECHR it makes no sense for it to be capable of justifying leave under Article 8. I find that there was nothing at all in Dr Britto's letter which would engage Article 3 or, equally, would give rise to a grant of relief for medical reasons under Article 8. The letter contains no firm prognosis or diagnosis of the appellant's condition and it is apparent from the determination [35] that, although he says that he did not attach weight to Dr Britto's letter, the judge did have regard to the appellant's "not uncommon medical conditions associated with age." The judge's finding that there was "no reliable evidence before me to show there was anything in the appellant's medical conditions which would prevent adequate maintenance of her conditions in Pakistan" is entirely, in my opinion, accurate.

5. As the Court of Appeal in **GS (India)** held, Article 8 requires "an additional factor to be weighed in the balance" where a medical claim under Article 3 has been rejected ([86], quoting **MM (Zimbabwe) [2012] EWCA Civ 279**). As the court noted [87] "a specific case has to be made under Article 8." The additional factor in the appellant's case is that she has a family life in the United Kingdom. However, as the judge noted, no element of that family life had been capable of enabling the appellant to succeed under Appendix FM of the Immigration Rules. Leaving aside her medical condition, it follows from the unexceptional family life aspects of her case should not, having failed to satisfy the Immigration Rules, allow her to succeed under Article 8 outside the Rules. That is the point which Judge Hillis has made at [37], relying on the authority of **Gulshan (Article 8-new rules-correct approach) [2013] UKUT 640 (IAC)**. In my opinion, even if the judge had accepted everything said by Dr Britto in his July 2014 letter, he would still have dismissed the appeal on Article 8 grounds. In any event, as I have noted above, Dr Britto's letter indicates an improvement in the appellant's condition and seeks to address her ability to give cogent oral evidence; it provides no support for allowing the appeal on Article 8 ECHR grounds.

6. In the circumstances, I find that the appeal should be dismissed.

DECISION

This appeal is dismissed.

Signed Date 25 February 2015

Upper Tribunal Judge Clive Lane