Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/23378/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 13 July 2015	**On 22 July 2015**

Before

UPPER TRIBUNAL JUDGE KEKIC
UPPER TRIBUNAL JUDGE SMITH

Between

AISHA BIBI
(ANONYMITY ORDER NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr Pulman, Counsel
For the Respondent: Mr Bramble, Senior Home Office Presenting Officer

Anonymity
Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008
No anonymity order was made by the First-tier Tribunal. We find that no particular issues arise on the facts of this case that give rise to the need for a direction. For this reason no anonymity direction is made.

DECISION AND REASONS

Background

1. The appellant is a citizen of Pakistan. She was born on 1 January 1944. She appeals against the respondent's decision dated 13 May 2014 refusing her leave to remain on Article 8 ECHR grounds and giving notice to remove her to Pakistan. The appeal was dismissed by First-Tier Tribunal Judge Murray by a decision promulgated on 14 January 2015 ("the Decision"). The matter comes before the Upper Tribunal to determine whether the Decision involved the making of an error of law.

2. Permission to appeal was granted by First-Tier Tribunal Judge Andrew on 4 March 2015 on one ground only – whether the Judge had given consideration to whether or not the appellant would be able to maintain her links with the community in the UK if she were removed to Pakistan. This ground is hereafter referred to as Ground 2. Before us, Mr Pulman sought to renew the remainder of the grounds (Grounds 1 and 3 to 5). Mr Bramble objected to this on the basis that the appellant had 4 months from the date of the refusal of permission to appeal on those grounds and had made no formal application to renew. We indicated that we would hear both parties on all grounds and would make a decision whether to admit them when considering our substantive decision whether the Decision contained an error of law.

3. The appellant is aged 71 years. She arrived in the UK on 13 April 2002 with leave to enter as a visitor until 8 May 2002, having lived for the previous 58 years in Pakistan. She arrived in the UK with a Mr Jamshed and his sister. However, Mr Jamshed passed away and his sister returned with the body, leaving the appellant behind in the UK. The appellant did not seek to regularise her stay until 24 June 2013 when she made an application for leave to remain on human rights grounds which was refused on 1 August 2013. She was not given a right of appeal at that stage and so her purported appeal was struck out as invalid. The appellant made a further application for leave to remain on 10 April 2014 which led to the respondent's decision which is the subject of this appeal.

4. The appellant has established strong ties to friends and the community in the UK. She undertakes voluntary and charitable work. The appellant lives with the Syed family and has formed a close relationship with Mr Syed. Mr Syed provides the appellant with some financial support.

5. The appellant claims to have lost all ties with Pakistan and in particular with her family. It is her case that her children abandoned her following her husband's death in 2000. Although the appellant accepts that she had community links in Pakistan before she came to the UK, she says that she has not maintained those contacts.

Submissions

6. Mr Pulman, in his skeleton argument, challenged the Judge's findings of fact. There were, he said, a number of areas where the Judge had failed to make factual

findings. He submitted that the Judge had failed to make findings about whether the appellant was vulnerable and naïve as Counsel had submitted, that no finding had been made as to whether the appellant had maintained contact with friends in Pakistan (her case was that she had not), that the appellant's evidence in relation to her children was not just that the appellant did not want to be a burden but also that her daughters considered her as such (which the Judge had failed to note) and that no findings had been made as to the appellant's relationship with her second son or concerning her current relationship with her first son (who had sought to contact her whilst she was in the UK). Mr Pulman suggested that it was for the respondent to show whether the appellant could be expected to retain ties in the UK or resume them in Pakistan, once the appellant had laid the evidential foundations for her case that she had no-one to return to in Pakistan and had close ties in the UK. The findings were, Mr Pulman submitted, crucial to the appellant's case.

7. In relation to Ground 2, Mr Pulman submitted that the Judge had addressed only the nature of the ties rather than the actual ties and had therefore failed to consider whether the actual ties in the UK could be maintained. The Judge had at [41] indicated that the ties were "of friendship and community" and as such could be established elsewhere. That failed to take account of the effect of removal on the appellant and those she would leave behind in the UK, and whether the appellant could continue, for example, the same sort of charitable work in Pakistan. Mr Bramble submitted that the Judge clearly had regard to the extent of the appellant's ties as she was required to do [39]. There was no need for the Judge to go into the detail suggested at paragraph 20 of the appellant's skeleton argument. The Judge had acknowledged the extent of the ties and accorded weight to those ties when considering the balancing exercise.

8. The focus of the appellant's Ground 3 and Ground 4 was the support provided by Mr Syed in the UK and whether that would continue if the appellant were returned to Pakistan. Mr Pulman submitted that the Judge should not have had regard to section 117(3)(b) of the 2002 Act when considering the appellant's financial circumstances in the UK as support was provided by Mr Syed and she was not reliant on public funds. Mr Pulman also submitted that the Judge had failed to explore in detail Mr Syed's assertion that he would continue support from the UK and had not for example examined the nature and extent of the support which would differ from that provided in the UK as, for example, the appellant would not have anywhere to live. Mr Bramble submitted that the application of section 117B was not a tick box exercise. What the Judge was required to do was consider all the public interest considerations. The Judge's approach had to be read also in the context of [40] – economic well-being included other matters such as obtaining treatment from the NHS. The Judge had considered the public interest as a whole and there was no error in that approach. The Judge was also entitled to find on the basis of Mr Syed's assertion that he would continue to support the appellant if she were to return to Pakistan.

9. Ground 5 concerned the Judge's findings in relation to the support which the appellant might obtain from her family in Pakistan. In this regard, Mr Pulman submitted that the Judge had placed significant weight on the fact that it was the appellant's decision to cease contact with her family. He submitted that it was irrelevant if the appellant had chosen to lose contact since it was not suggested that the appellant had done so for any improper motive such as to enhance her chances of remaining in the UK. Mr Bramble pointed out that the Judge had sought to elicit further information about the relationship with the appellant's family by further questioning and had clearly been impressed with what had been said in the oral evidence. This then fed through to the findings set out at [31] and the conclusions at [32]. Those conclusions were borne out on the evidence.

10. Ground 1 focuses on the meaning of "little weight" for the purposes of section 117B(4) of the 2002 Act. Mr Pulman submitted that "little weight" could not mean "no weight" and different private lives needed to be accorded different weight according to their intrinsic strength. He submitted that what was meant by section 117B(4) was that less weight should be accorded to a private life where that was formed during an unlawful or precarious period of residence than one formed during a lawful or settled period of residence. Here there was no dispute that the appellant had been in the UK unlawfully for the majority of her period of residence. Mr Pulman submitted that the Judge had erred in failing to indicate how much weight should be attached to the appellant's private life at [41] and had also failed at that juncture to mention the duration and strength of the private life which she assessed to exist. Mr Bramble pointed out that section 117B(4) was unqualified in its approach – the section did not say "less weight" but "little weight". The Judge had properly formulated the test and made an appropriate comment that "little weight" should be accorded. That was the correct test.

Decision and reasons

11. We deal first with whether we should allow the appellant to pursue those grounds on which permission was refused, namely Grounds 1 and 3-5. The grounds are inter-related. Furthermore, the respondent had responded to grounds 1 to 5 in the Rule 24 statement. There was therefore no prejudice to the respondent in allowing the appellant to pursue all grounds. Our decision therefore deals with grounds 1 to 5.

12. The crux of the appellant's case is that she has established a private life in the UK on the basis of her length of residence, involvement in voluntary and charitable work. She also has close community ties in the UK with the Syed family and wider community. Mr Syed gave evidence as to the closeness of the relationship. Mr Syed also provides the appellant with some financial support in the UK. In evidence, he said that he would continue to provide that support if the appellant were returned to Pakistan. In relation to the position in Pakistan, the appellant's case is that she no longer has contact with her children in Pakistan. She says that one of her sons kicked her out and she did not want to become a burden to her children. Her impression was that her daughters considered her as such. Her

other son tried to contact her whilst she was in the UK but she refused to speak to him. She would have no-one to return to in Pakistan and return would be harsh particularly in light of her age and vulnerability.

13. The Judge accepted that the appellant had established a private life in the UK and that the interference with that private life was of sufficient gravity to engage Article 8 [35]. Her age was not of itself a significant obstacle as the appellant was capable of looking after herself [32]. The asserted vulnerability of the appellant was not evidenced beyond a bald assertion but this finding also dispenses with the appellant's criticism that this was not considered. The ties to the community including voluntary work and personal advice and support to others were accepted [39]. The friendship ties with the community in the UK were accepted [41]. In relation to Pakistan, the Judge accepted that the appellant had not been in contact with her family members for a number of years but that this was her choice [32]. One of her sons had tried to contact her whilst she was in the UK [30]. On that basis she had not been abandoned by her children [30]. The appellant had community links in Pakistan before coming to the UK [30]. Mr Syed gave evidence that he would provide support to the appellant if she were to return to Pakistan [32]. The Judge had regard to section 117B and in particular the factors that the appellant was not financially independent, had not demonstrated that she spoke English and that little weight should be given to the appellant's private life because she was in the UK unlawfully. The issue for the Judge was then whether the decision to remove was proportionate or whether the appellant could reasonably be expected to return to Pakistan to enjoy her private life there. It was in that context that the Judge concluded at [41] as follows:-

> "I am required, by statute to place little weight on a private life established whilst the Appellant is here unlawfully. I also have taken account of the public interest in the general sense, as clarified in Shahzad. I find that the private life ties that she has established here are of the kind that also can be established elsewhere, being ties of friendship and community ties. The Appellant had such ties in Pakistan which could be rekindled. She spent the first 58 years of her life there. I find that in view of the Appellant's refusal to attempt to remain in contact with her family in Pakistan, the fact that her private life was established whilst she was here unlawfully and the fact that she would have financial assistance to help her re-establish in Pakistan, the interests of immigration control outweigh the Appellant's interests in this case and that the Respondent's decision is a proportionate one"

14. The Judge accepted that the appellant had established a private life in the UK of sufficient gravity to engage Article 8 ECHR. The issue was whether that private life – rather than those exact ties - could be expected to be enjoyed elsewhere or whether the effect of removal was sufficiently serious to amount to a breach of Article 8. That is the basis of the Judge's conclusion above.

15. The appellant's grounds of appeal amount to no more than a disagreement with the findings of the Judge. No doubt as a counsel of perfection, more detail could have been gleaned as to matters such as the level and extent of the support which Mr Syed would provide on return. However, it was for the appellant to make out

her case and to draw the Judge's attention to matters which she relied on and not for the Judge (or the respondent) to make it for her. No evidence was adduced as to whether her friends and community in the UK would continue to maintain contact with the appellant if she were removed to Pakistan (aside the evidence that Mr Syed would continue to support her). The nature of third party support is precarious (as ground 4 recognises) and there is no error in the Judge's finding that the dependency on third party support in the UK meant that the appellant was not financially independent. On the clear meaning of those words, she is not.

16. The evidence in relation to family support was that one of her children had tried to resume that contact and it was her choice to reject it. It was not an irrational conclusion to draw from this evidence that the appellant could seek to resume that contact on return.

17. The matters to which the Judge was obliged to have regard by reason of section 117B included that little weight was to be given to private life formed when a person was in the UK unlawfully or with precarious status. That is the weight which the Judge said she had given to the appellant's private life and that was the correct test. The assessment of the strength of private life is not judged by reference to the weight to be given to it under section 117B but by an analysis of what the elements are when looking at the extent of family and private life formed. Here, the private life formed was made up of a period of residence in the UK, and friendship and community ties formed during that period. Those matters were clearly considered.

DECISION

18. For the above reasons, we find that the First-Tier Tribunal Judge did not make an error of law in the Decision. The Decision is therefore upheld.

Signed  Date 21 July 2015

Upper Tribunal Judge Smith