



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/24175/2014
IA/24176/2014
IA/24204/2014
IA/24212/2014

THE IMMIGRATION ACTS

**Heard at Field House
On 30 January 2015**

**Promulgated
On 25 February 2015**

Before

**THE HONOURABLE MR JUSTICE GOSS sitting as an UPPER TRIBUNAL JUDGE
UPPER TRIBUNAL JUDGE J A J C GLEESON**

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

And

**SABAR MANSOOR (1)
TARIQ MANSOOR MEHMOOD (2)
HAMMAD AHMED (3)
FAIQA MANSOOR (4)**

Respondents

Representation:

For the Appellants: Mr Kandola, Home Office Presenting Officer
For the Respondent: Mr Khan

DECISION AND REASONS

1. This is an appeal with leave against the decision made by First-tier Tribunal Judge Camp promulgated on 6 November 2014 in which the respondents to this appeal, Sabar Mansoor (1), Tariq Mansoor Mehmood (2), Hammad Ahmed (3) and Gaiqa Mansoor (4), were successful in their appeal against the decision of the Secretary of State for the Home Department ('the appellant') of 20 May 2014 refusing their application for leave to remain and the consequential decision to remove them to Pakistan.
2. The respondents are Pakistani nationals. They arrived in the UK on 20 July 2012, the first respondent having leave to enter as a Tier 4 (General) Student valid to 30 April 2014, her husband, the second respondent, and their two children, the third and fourth respondents respectively, having Entry Clearance as Tier 4 (General) dependants, also valid until 30 April 2014. On 31 March 2014 they applied for leave to remain on the basis of their private life, relying on Article 8 of the ECHR. No reference was made to fact that the second respondent was receiving treatment for cirrhosis caused by hepatitis C, with chronic liver disease. In the letter of refusal, the appellant identified that the respondents did not meet the requirements of Appendix FM or paragraph 276ADE of the Immigration Rules and there were no exceptional circumstances warranting a consideration of their being granted leave to remain outside the Immigration Rules, it would not be unreasonable to expect the children to leave the UK. Account was taken of their interests and the appellant was acting in accordance with section 55 of the Borders, Citizenship and Immigration Act 2009; they would leave as a family.
3. The First-tier Tribunal found that it would be inhuman to return the second respondent to Pakistan and that this was "one of those very rare cases where removal would breach the United Kingdom's obligations under Article 3 on medical grounds" [paragraph 24]. Further, in relation to Article 8, it was found that as the second respondent had an illness which will be terminal if there is no surgical intervention, which is in practical and financial terms was not available to him in Pakistan, these were both exceptional and compelling circumstances not recognised within the rules [Paragraph 26] and his removal would be a breach of Article 8 [paragraph 38]. It followed that if he was to remain, it would also be disproportionate to remove the other respondents [paragraph 40]. It was stressed that had it not been for the second respondent's illness, this conclusion in relation to a breach of Article 8 would not have been reached [paragraph 41].
4. There are two grounds of appeal. The first is one of procedural fairness, the Judge having expressed sympathy for the second respondent and disclosed that he suffered from the same condition. Mr Kandola, on behalf of the appellant, did not pursue this ground. The second was that the Judge materially misdirected himself in relation to the finding of exceptional circumstances justifying the appeal being allowed on Article 3 and 8 grounds.
5. The relevant factual findings to be distilled from the Determination are that

- a. The second respondent suffers from advanced chronic liver disease due to hepatitis C cirrhosis;
 - b. The seriousness of the disease and the need for a liver transplant has been established;
 - c. A liver transplant in Pakistan could cost 4.5 million rupees (about £24,500). Because of his financial and personal circumstances, treatment for his condition in Pakistan would be “prohibitively expensive”.
6. The law in relation to the application of Article 3 to the cases of removal of those suffering from a serious medical condition which are being effectively treated in this country as established by the case of *N v. Secretary of State* [2005] 2 AC 296 [2005] UKHL 31 and the judgment in *N v United Kingdom* [2008] EHRR 39 was comprehensively considered and applied in the case of *GS (India), EO (Ghana), GM (India), PL (Jamaica), BA (Ghana) & KK (DRC)* [2015] EWCA Civ 40, in which judgment was given on the day we heard this appeal. In that case, five of the six appellants were suffering from terminal renal failure or end stage kidney disease (ESKD). It is not necessary for the purposes of this decision to refer at length to the case of *N* (ante) or *GS & others* (ante). Exceptionality, bringing a case within Article 3, will only apply where removal will not only inevitably lead to certain death but also death in circumstances of inhuman and degrading conditions – see the judgments of Laws LJ at paragraphs 66-67 and Underhill LJ at paragraphs 104-105.
7. In relation to Article 8, *GS & others* (ante) makes clear that if the Article 3 claim fails, a claim under Article 8 requires “some separate or additional factual element within the Article 8 paradigm – the capacity to form and enjoy relationships – or a state of affairs having some affinity with that paradigm” *per* Laws LJ [paragraph 80]. Underhill LJ [in paragraph 111] also referring to *MM (Zimbabwe)* [2012] EWCA Civ 279 identified what he described as the two essential points that were being made in that case and represented the law –
- “first the absence or inadequacy of medical treatment, even life-preserving treatment, in the country or return, cannot be relied on at all as a factor engaging Article 8: if that is all there is, the claim must fail. Secondly, where Article 8 is engaged by other factors, the fact that the claimant is receiving medical treatment in this country which may not be available in the country of return may be a factor in the proportionality exercise; but that factor cannot be treated as by itself giving to a breach since that would contravene the “no obligation to treat” principle”.
8. The First-tier tribunal made no reference to *MM (Zimbabwe)* (ante). The Judge found that the “extreme seriousness” of the second respondent’s condition and “the devastating effect on his moral and physical integrity of removing him to Pakistan” constrained him to conclude that his removal would breach Article 8. He identified that as the sole reason for his conclusion.

9. The findings that the removal of the second respondent would contravene Articles 3 and 8 were not conclusions to which the First-tier Tribunal could come on the evidence. This case did not come close to being one of those exceptional cases where return would breach Article 3; in any event, medical treatment was available in Pakistan, it was financial constraints that were said to prevent treatment there. Further, there were no other separate or additional factual elements within the Article 8 paradigm.
10. Accordingly, we find the Judge erred in law. The appeal is allowed and we set the determination aside.
11. We consider this to be an appropriate case for the decision to be remade. The case of each respondent to this appeal was entirely dependant upon that of the second respondent. For the reasons set out, there are no grounds for allowing the appeal by the second respondent of the appellant's decision of 20th May 2014. Accordingly, the appeal of each appellant in respect of that decision (the respondents in this appeal) must be dismissed.

Signed

The Honourable Mr Justice Goss

Date: 2 February 2015