



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

Appeal Number: HU/20744/2019_P

THE IMMIGRATION ACTS

Decided under Rule 34 without a hearing
On 30 September 2020

**Decision & Reason Promulgated
On 7th October 2020**

Before:

UPPER TRIBUNAL JUDGE GILL

Between

Mrs. Ahida Bibi
(ANONYMITY ORDER NOT MADE)

Appellant

And

The Secretary of State for the Home Department

Respondent

This is a decision on the papers without a hearing. The appellant's written submissions did not address the question whether it would be appropriate for a decision to be made without a hearing. There were no written submissions from the respondent. The documents described at para 4 below were submitted. A face-to-face hearing or a remote hearing was not held for the reasons given at paras 7-19 below. The order made is set out at para 76 below. (*Administrative Instruction No. 2 from the Senior President of Tribunals*).

Representation (by written submissions):

For the appellant: Mr F Chaudhry, of Counsel, instructed by IIAS Solicitors.
For the respondent: (No representation).

DECISION

1. The appellant, a national of Pakistan born on 1 January 1977, appeals against a decision of Judge of the First-tier Tribunal O'Hanlon who, in a decision promulgated on 12 March 2020 following a hearing on 19 February 2020, dismissed her appeal on human rights grounds (Article 8) against a decision of the respondent of 3 December 2019 to refuse her application of 3 September 2019 for leave to remain on human right grounds (Article 8). In support of her application, the appellant had relied (in summary) on her marriage to Mr Saleem Haider, a British citizen (thereafter the "sponsor"); the sponsor's medical condition (he had suffered a heart attack in December 2014); that she provides care for her mother-in-law who was bedridden; and her private life claim.
2. Permission to appeal was granted by the First-tier Tribunal ("FtT") in a decision signed on 6 May 2020 and sent to the parties on 1 June 2020.
3. On 16 June 2020, the Upper Tribunal sent to the parties a "*Note and Directions*" issued by Upper Tribunal Judge Kamara dated 12 June 2020. Para 1 of the "*Note and Directions*" stated that, in light of the need to take precautions against the spread of Covid-19, Judge Kamara had reached the provisional view, having reviewed the file in this case, that it would be appropriate to determine questions (a) and (b) set out at para 1 of her "*Note & Directions*", reproduced at my para 6(i)(a) and (b) below, without a hearing. Judge Kamara gave the following directions:
 - (i) Para 2 of the "*Note and Directions*" issued directions which provided for the party who had sought permission to make submissions in support of the assertion of an error of law and on the question whether the decision of the FtT should be set aside if error of law is found, no later than 21 days after the "*Note and Directions*" was sent to the parties; for any other party to file and serve submissions in response, no later than 28 days after the "*Note and Directions*" was sent to the parties; and, if such submissions in response were made, for the party who sought permission to file a reply no later than 56 days after the "*Note and Directions*" was sent to the parties.
 - (ii) Para 3 of the "*Note and Directions*" stated that any party who considered that despite the foregoing directions a hearing was necessary to consider questions (a) and (b) may submit reasons for that view no later than 21 days after the "*Note and Directions*" was sent to the parties.
4. In response to the "*Note and Directions*":
 - (i) the Upper Tribunal has not received any submissions on the respondent's behalf; and
 - (ii) the Upper Tribunal has received a document entitled: "*Further Submissions on behalf of the Appellant as per Directions by the Upper Tribunal dated 12 June 2020*" by Mr Chaudhry, submitted under cover of a letter dated 16 July 2020 from IIAS and sent to the Upper Tribunal by email dated 16 July 2020 timed at 17:15 hours and again by email dated 17 July 2020 timed at 10:57 hours.

5. The appellant's submissions were filed and served outside the 21-day time limit specified by Judge Kamara at para 2(i) of the "*Note & Directions*". I extend the time limit for compliance to 16 July 2020.

The issues

6. I have to decide the following issues (hereafter the "*Issues*"),
 - (i) whether it is appropriate to decide the following questions without a hearing:
 - (a) whether the decision of Judge O'Hanlon involved the making of an error on a point of law; and
 - (b) if yes, whether Judge O'Hanlon's decision should be set aside.
 - (ii) If yes, whether the decision on the appellant's appeal against the respondent's decision should be re-made in the Upper Tribunal or whether the appeal should be remitted to the FtT.

Whether it is appropriate to proceed without a hearing

7. The appellant's written submissions do not address the question whether it would be appropriate for a decision to be made without a hearing. There were no submissions from the respondent whether it would be appropriate to make a decision without a hearing.
8. I do not rely upon the mere fact that neither party has made submissions on the question whether it is appropriate for the Upper Tribunal to make a decision on questions (a) and (b) without a hearing as factors that justify proceeding without a hearing. I have considered the circumstances for myself.
9. The appeal in the instant case is straightforward.
10. I am aware of, and take into account, the force of the points made in the dicta of the late Laws LJ at para 38 of Sengupta v Holmes [2002] EWCA Civ 1104 to the effect, inter alia, that "*oral argument is perhaps the most powerful force there is, in our legal process, to promote a change of mind by a judge*"; and the dicta in the decision in R v Sussex Justices, ex parte McCarthy [1924] 1 KB 256 to the effect that justice must be done *and* be seen to be done, to mention just two of the cases in which we have received guidance from judges in the higher courts concerning the importance of an oral hearing.
11. I am aware of and have applied the guidance of the Supreme Court at para 2 of its judgment in Osborn and others v Parole Board [2013] UKSC 61.
12. Given that my decision is limited to the Issues, there is no question of my making findings of fact or hearing oral evidence or considering any evidence at this stage.
13. In addition, I take into account the seriousness of the issues in the instant appeal for the appellant. This appeal relates to her Article 8 claim, the outcome of which will have implications for the human rights of her husband as well as her mother-in-law

who are both said to be in poor health. The instant case is therefore a case of some seriousness.

14. I have considered all the circumstances very carefully and taken everything into account, including the overriding objective.
15. Taking a preliminary view at the initial stage of deciding whether it is appropriate and just to decide the Issues without a hearing, I considered Judge O'Hanlon's decision, the grounds and the submissions before me. I was of the view, taken provisionally at this stage, that there was nothing complicated at all in the assessment of the Issues in the instant case, given that the grounds are simple and straightforward and Judge O'Hanlon's decision straightforward. I kept the matter under review throughout my deliberations. However, at the conclusion of my deliberations, I was affirmed in the view I had taken on a preliminary basis.
16. I take into account that the Tribunal is now listing some cases for face-to-face hearings and using technology to hold hearings remotely in other cases where it is appropriate to do so. However, the fact is that it is not possible to accommodate all cases in one of these ways without undue delay to all cases.
17. Of course, it is impermissible, in my view, to proceed to decide a case without a hearing if that course of action would be unfair in the particular case. If it would be unfair to proceed to decide an appeal without a hearing, it would be unfair to do so even if there would be a lengthy delay in order to hold a hearing face-to-face or remotely or even if there is a consequent delay on other cases being heard. The need to be fair cannot be sacrificed.
18. There are cases that can fairly be decided without a hearing notwithstanding that the outcome of the decision may not be in favour of the party who is the appellant. In the present unprecedented circumstances brought about by the coronavirus pandemic, it is my duty to identify those cases that can fairly be decided without a hearing.
19. Having considered the matter with anxious scrutiny, taken into account the overriding objective and the guidance in the relevant cases including in particular Osborn and others v Parole Board, I concluded that it is appropriate, fair and just for me to exercise my discretion and proceed to decide the Issues without a hearing, for the reasons given in this decision.

Questions (a) and (b) - whether Judge O'Hanlon erred in law and whether her decision should be set aside

Background

20. The appellant married the sponsor in Pakistan on 5 August 2002. She entered the United Kingdom on 24 February 2010 with entry clearance as a spouse valid until 10th May 2012. She has remained in the United Kingdom unlawfully since then.
21. The appellant made an application for leave to remain on 21 April 2018 which was refused on 8 July 2018. Her appeal against this decision was dismissed by Judge of the First-tier Tribunal Turner in a decision promulgated 25 March 2019 following a hearing on 6 March 2019. Permission to appeal to the Upper Tribunal was refused by

the First-tier Tribunal, following which her renewed application for permission to appeal was refused by the Upper Tribunal in a decision sent to the parties on 8 July 2019.

22. The appellant then made the application dated 3 September 2019 which was refused in the decision dated 3 December 2019 that is the subject of the instant appeal.

Judge Turner's decision

23. Given that one of the grounds challenges the fact that, pursuant to the guidance in Devaseelan v SSHD * [2002] UKIAT 702, Judge O'Hanlon relied upon the findings of Judge Turner, it is necessary to set out Judge Turner's material findings and summarise her reasons for her findings.

24. Judge Turner provided a summary of the appellant's Article 8 claim before her at paras 12-16 of her decision which read:

- "12. The Appellant and her Sponsor have lived together since she arrived in the UK in 2010. The Appellant's mother-in-law also resides at the family home. The Appellant's mother-in-law has a number of health conditions that entitles her to disability living allowance and carer's allowance. The carer's allowance is paid to the Sponsor. The Appellant provides all of the necessary care for her mother-in-law.
13. The Appellant's sponsor is also ill, having suffered a heart attack. He is not able to care for his mother alone.
14. The Appellant's two sisters-in-law live approximately 10-15 minutes away in car but cannot provide care to the Appellant's mother in law. The Appellant's step-daughter also lives a similar distance away but is a teacher and has her own children so cannot provide the care required.
15. The Appellant provides intimate personal care to her mother in law which no one else can provide. The family have attempted to get social services involved to provide assistance, but the mother-in-law was not happy about this.
16. The Appellant cannot return to Pakistan. No one would be available to look after her mother in law in the UK. Her husband is ill and would not be able to afford the health care that he needs in Pakistan. A return would be a disproportionate interference with her family and private life."

25. It is clear from Judge Turner's decision that there were aspects of the evidence before her that she did not find credible. In summary:

- (i) Judge Turner rejected the appellant's explanation that there was "*no sinister reason*" why she did not make an application in-time to extend her visa, saying that she and the sponsor had both referred to their suffering financial difficulties at around that time. She therefore questioned whether they may not have satisfied the financial requirement. She also noted that there was no evidence that the appellant would be able to complete the English language test (para 31 of her decision).
- (ii) The sponsor's evidence that he helped to care for his mother as it took more than one person to provide such care contradicted the appellant's evidence who had stated that it was only her who provided the care as she would not allow anyone else to do so (para 33).

- (iii) The sponsor's evidence that they had made enquiries of social services for care to be provided by them to his mother and that this had been unsuccessful was incredible, as there was no documentary evidence to corroborate the involvement of social services and the sponsor's evidence contradicted the appellant's evidence who had said in oral evidence that they had not made such enquiries (para 39).
- (iv) Judge Turner noted that the sponsor was receiving carer's allowance to care for his mother and considered that there was an element of dishonesty which undermined the credibility of both the appellant and the sponsor, in that, either the sponsor was receiving carer's allowance to which he was not entitled because it was in reality the appellant who was caring for her mother-in-law or the appellant had misled the Tribunal (para 34).

26. Judge Turner found that there were *some* obstacles to the appellant's return to Pakistan, the main obstacles being the care of the appellant's mother-in-law and accessibility to medication for the sponsor (para 38 of her decision). However, she found that there were no *insurmountable* obstacles to family life being enjoyed between the appellant and the sponsor in Pakistan and therefore that the appellant does not satisfy EX.1. of Appendix FM. Her reasons may be summarised as follows:

- (i) In relation to the care required by the appellant's mother-in-law, Judge Turner found that the family did not appear to have made any enquiries regarding alternative care for the mother-in-law (para 32); that, given that the mother-in-law was entitled to disability living allowance and carer's allowance, she was entitled to social care (para 39); and that the social services would be able to complete a full assessment of the mother-in-law's care needs and implement a care plan (para 39) including care for intimate tasks (para 43). She found, in the alternative (para 39), that the appellant had other family members who live locally who could assist. The appellant had two sisters-in-law and her step-daughter (para 32). She found (para 39) that this would not entail very serious hardship, saying that she would put it as no higher than that it may be an inconvenience. The sponsor was not dependent upon his mother and could remain in contact with his mother using modern means of communication (para 39).
- (ii) In relation to the sponsor's health, Judge Turner noted (para 37) that the letter from his GP at page 60 of the respondent's bundle confirmed that he had had a heart attack and it stated that he continues to require "*monitoring and medical*" to reduce the risk of a further heart attack. She considered, however, that as the letter dated back to 26th February 2016, it was not clear what the current position was. Given that the sponsor had said that he helped to care for his mother as it requires more than one person to care for her, Judge Turner found that the sponsor's health in itself was not sufficiently limited to the extent that he himself would need care or that his health was a sufficient reason to prevent his return to Pakistan and that, if treatment was needed, the "*Country Policy Information Note: Pakistan: Medical and healthcare issues*" dated August 2018 showed that there were at least four specialist heart treatment centres which provided care free of charge in Pakistan.

27. Judge Turner found that para 276ADE(1)(vi) of the Immigration Rules did not apply because there were no very significant obstacles to the appellant's reintegration in Pakistan. Her reasons may be summarised as follows:
- (i) The appellant had lived in Pakistan until 2010 and therefore had experience of its culture (para 36). There was no evidence to disprove the appellant's claim that neither she nor the sponsor had family in Pakistan. However, she found (para 37) that, on the appellant's own evidence, she must have lived in Pakistan without any support after her mother-in-law and the sponsor had come to the United Kingdom. Accordingly, Judge Turner found (para 41) that, whether or not the appellant has any family left in Pakistan, the fact that she was able to live in Pakistan until 2010 suggested that she would be able to do so again.
 - (ii) Judge Turner considered that the appellant could help the sponsor to adjust himself in Pakistan and to support him. The sponsor and the appellant both speak Urdu and so one or both would be in a position to work to support them. The sponsor was also born in Pakistan (para 36).
28. In relation to the appellant's Article 8 claim outside the Immigration Rules, Judge Turner said (para 43) that she was concerned that the appellant had overstayed in the United Kingdom since 2012 without remedying the position. She did not accept the appellant's evidence that this was an oversight and had "*no sinister motive*". She said that she had to question whether the delay in making the application was a way of trying to circumvent the Immigration Rules by building up more time in the United Kingdom. Judge Turner then said, at para 44, that taking all of the issues in the round and balancing matters both for and against the appellant, the respondent's decision was proportionate.

Judge O'Hanlon's decision

29. Judge O'Hanlon set out the basis of the appellant's Article 8 claim before him at para 20 of his decision, the relevant part of which reads:

"20. ...

- (f) The Appellant's marriage with her husband is still subsisting. The Appellant looks after her husband who has heart problems and also looks after and cares for her mother-in-law who is over 80 years of age and bed-bound.
- (g) The Respondent has indicated there were no insurmountable obstacles in accordance with Paragraph EX.2 of Appendix FM in continuing her family life with her husband outside the United Kingdom. The Appellant contends that this ignores the fact that her husband is a British citizen permanently settled in the United Kingdom.
- (h) The Appellant's husband suffers from heart problems and is under medical treatment in the UK. The Appellant's husband's mother is over 80 years of age and bed-bound. The Appellant cares for her mother-in-law's personal hygiene including cleaning her due to her incontinence.
- (i) There would be insurmountable obstacles in returning to Pakistan with her husband as her husband would have to leave his ill mother and re-form family life with the Appellant in Pakistan.

- (j) The Appellant's husband has severe heart problems and her mother-in-law suffers from various illnesses. The Appellant has performed the duties as carer of both her husband and her mother-in-law. The Appellant's husband and mother-in-law cannot afford a carer from a private care home on a 24 hour/7 day basis.
- (k) In all of the circumstances there are very exceptional, compelling and compassionate grounds resulting in insurmountable obstacles for the Appellant returning back to Pakistan."

30. It can therefore be seen that the basis of the appellant's Article 8 claim before Judge Turner and before Judge O'Hanlon was essentially the same.
31. Judge O'Hanlon gave his reasons for dismissing the appellant's appeal at paras 25-35 of his decision. At para 25, he stressed that he had considered all of the evidence in the appeal, both written and oral. At para 26, he referred to the guidance in Devaseelan v SSHD * [2002] UKIAT 702.
32. Relevant to one of the grounds of appeal is para 29 of Judge O'Hanlon's decision where he referred, inter alia, to two letters from the mother-in-law's doctor/GP. The first letter was a letter dated 8 February 2019 at AB/16 and the second letter a letter dated 5 February 2020 at AB/13.
33. Judge O'Hanlon said that the letters dated 8 February 2019 and 5 February 2020 were identical. Judge O'Hanlon then said:

"29.... The content of that letter is identical to the earlier letter from the Appellant's GP which was dated 8th February 2019. Although this letter is not specified in Judge Turner's determination, reference is made in Judge Turner's determination at Paragraph 28 to the Appellant's bundles of documents including copy passport document, marriage certificate, income support and carer's allowance letters, medical letters, and tenancy agreement. **It may be that the letter of 8th February 2019 was before Judge Turner at the hearing on 6th March 2019 but I have no certainty of that. However given that the letters are in identical terms it is reasonable to assume, as the letters are from the Appellant's mother-in-law's GP, that they accurately describe the medical conditions of the Appellant's mother-in-law and her care requirements** and on the basis of the medical evidence in the Appellant's own bundle, it would appear therefore that the medical condition and care requirements of the Appellant's mother-in-law are unchanged since the determination made by Judge Turner. In his submissions the Appellant's Representative stated that nothing of significance had changed since the previous determination except that the Appellant's mother-in-law's medical condition had deteriorated but in the light of the medical evidence by way of the GP's letters previously referred to, I do not find that that is the case. I find that the medical condition and care needs of the Appellant's mother-in-law are effectively unchanged since the earlier determination of Judge Turner."

(My emphasis)

34. Judge O'Hanlon then said, at para 30, that it followed that nothing had changed since the decision of Judge Turner and therefore that Judge Turner's decision should be his starting point pursuant to Devaseelan.
35. At para 31, Judge O'Hanlon said that the only matter raised in the appellant's grounds of appeal, at para 9 thereof, that had not been specifically dealt with in the decision of Judge Turner was the question of the appellant being removed to Pakistan and then making an application to join her husband in the United Kingdom. He noted that para 9 of the grounds of appeal relied upon Beoku-Betts v SSHD

[20081 UKHL 39 and Chikwamba v SSHD 120081 UKHL 40. He noted that Judge Turner had questioned whether or not the appellant and the sponsor would satisfy the financial test required for entry clearance or whether the appellant would pass the English language test. He said that it was clear from paras 43-44 of Judge Turner's decision that these aspects were put into balance in her consideration of proportionality.

36. At para 33, Judge O'Hanlon said that as Judge Turner had not made specific reference to Chikwamba and Beoku-Betts, he had considered the issues. Para 33 reads:

"33. Although Judge Turner did not refer specifically to the cases of Beoku-Betts and Chikwamba, the question of making a subsequent application was considered at Paragraphs 43 and 44 of Judge Turner's determination. However, as Judge Turner has not made specific reference to these issues, I have done so. **I have carried out the proportionality assessment in accordance with the principles established in Hesham Ali (Iraq) v SSHD [20161 UKSC 60, using the structured approach to assessing proportionality as established in Bank Mellat v HM Treasury (No 2) [20131 UKSC 39. Having done so, and taking into account all of the matters both for and against the Appellant as referred to in the findings of Judge Turner, I do not find that the consideration of the effect of the Appellant having to leave the UK and then making an application to return are sufficient to tip the balance in favour of the Appellant. **Adopting the findings of Judge Turner in relation to all other issues** and taking into account the reference to Chikwamba which had not been specifically determined by Judge Turner, I find that consideration of the point made by the Appellant in relation to Chikwamba is not sufficient for me to determine that the decision made by the Respondent was a disproportionate means of achieving the legitimate aim of securing the public interest through the consistent application of immigration controls."**

(My emphasis)

37. Judge O'Hanlon then said, at paras 34-35, as follows:

"34. I therefore find that insofar as the matters which were previously determined by Judge Turner are concerned, the Appellant's application relies upon facts which are not materially different from those considered by Judge Turner in the earlier determination and that accordingly, I find that those issues have previously been determined and accordingly, refuse the Appellant's appeal on those grounds.

35. For the avoidance of doubt, insofar as it was suggested that the issues of Beoku-Betts and Chikwamba were not considered by Judge Turner, I have considered those aspects and having done so, do not find that the Respondent's decision to be disproportionate to the legitimate aim of maintaining the public interest through the maintenance of effective immigration controls as referred to in Section 117B of The 2002 Act."

The grounds

38. I have extracted six grounds from the grounds of appeal. I have provided the numbering below.

39. Grounds 1, 2 and 3 relate to Judge O'Hanlon's reliance upon Judge Turner's finding that there were no insurmountable obstacles to family life being enjoyed between the appellant and the sponsor in Pakistan. In summary, they contend as follows:

- (i) Ground 1: The guidance in Devaseelan was not applicable because Judge O'Hanlon accepted that there was fresh evidence, i.e. a letter from the GP dated 5 February 2020.
 - (ii) Ground 2: Judge O'Hanlon said that the GP's letter dated 5 February 2020 was the same as the previous letter dated 8 February 2019 but in the same breath he accepted that there was no certainty that the earlier letter was before Judge Turner. Judge O'Hanlon therefore erred when he resorted to an assumption at para 29 of his decision.
 - (iii) Ground 3: Judge O'Hanlon interpreted the requirement to show "*insurmountable obstacles*" in a literal way, contrary to the decision on Agyarko [2015] EWCA Civ 440 where it was held that it was necessary for the "*...Rules to be interpreted in a sensible and practical rather than a purely literal way...*"
40. Ground 4 relates to the appellant's private life claim under para 276ADE(1)(vi) of the Immigration Rules. It contends that Judge O'Hanlon erred by failing to make any finding at all under para 276ADE(1)(vi) which he did not mention at all.
41. Grounds 5 and 6 relate to Judge O'Hanlon's finding that the decision was proportionate and that there were no exceptional circumstances. In summary, they contend that Judge O'Hanlon erred in law as follows:
- (i) Ground 5: Judge O'Hanlon failed to follow the step-by-step approach as laid down in R (Razgar) v SSHD (2004) UKHL 27 and considered the issue "*in a throwaway line*".
 - (ii) Ground 6: Judge O'Hanlon's decision was irrational, given that the appellant has been in the country for more than 10 years; that she was a lawful entrant and had missed submitting an in-time application to extend her leave "*due to devastating circumstances of the family*". Her character was unblemished. "*It beggars belief when it is suggested that she should go back alone or with her husband who is a British citizen and seriously ill.*"

Submissions

42. I will deal with the appellant's written submissions in my assessment below, to the extent that I consider it necessary to do so.

Assessment

Ground 1

43. Ground 1 contends that the letter dated 5 February 2020 from the mother-in-law's GP constituted fresh evidence. The grounds do not contend that there was any other fresh evidence before Judge O'Hanlon. In this respect, I have noted that Judge O'Hanlon said at para 28 of his decision that he was invited by the appellant's representative to rely upon the appellant's bundle of evidence but that the appellant's representative did not particularise the documents that he was being invited to consider. Judge O'Hanlon then went on to consider the evidence in the bundles. His assessment at para 28 has not challenged.

44. Ground 1 concerns only the letter from the mother-in-law's GP dated 5 February 2020. Plainly, this letter was not before Judge Turner because it post-dates her decision. However, Judge O'Hanlon correctly said that the letters dated 8 February 2019 and 5 February 2020 were identical in content.
45. It is important to note that the grounds do not challenge Judge O'Hanlon's assessment that the two letters were identical, nor (and I emphasise this) do they challenge his assessment that the mother-in-law's condition was unchanged since Judge Turner's decision.
46. Accordingly, although Judge O'Hanlon had before him the letter dated 5 February 2020 that was not before Judge Turner, the significant point is that her medical condition remained unchanged since the decision of Judge Turner. On that basis, I reject the submission in ground 1 that there was any fresh evidence in this respect before Judge O'Hanlon. The mere fact that the appellant produced yet more evidence of her mother-in-law's condition does not, of itself mean that there was fresh evidence before Judge O'Hanlon. By way of analogy, if an asylum claimant whose evidence has been wholly disbelieved by a Judge of the First-tier Tribunal and who has had his appeal dismissed subsequently submits, in support of a second appeal, a new witness statement in which he simply reiterates the same evidence that was advanced before the first judge, the new witness statement does not constitute *fresh* evidence, as such. It is the same evidence which is simply being repeated.
47. Even if I am wrong about that, and the evidence before Judge O'Hanlon constitutes fresh evidence, the guidance in Devaseelan was nevertheless still applicable. This is because, as Judge O'Hanlon said at para 26 of his decision, Devaseelan states, inter alia, that, if the case put before the second adjudicator relies upon facts which are not materially different from those put to the first adjudicator and the appellant proposes to support the claim by what is in essence the same evidence as that available to him at that time, the second adjudicator should regard the issues as settled by the first adjudicator's determination *and make findings in line with the first determination rather than allowing the matter to be relitigated*.
48. For the reasons given at paras 43-47 above, I reject ground 1, that the guidance in Devaseelan was not applicable.

Ground 2

49. At para 29 of his decision, Judge O'Hanlon said that he could not be certain that the letter dated 8 February 2019 had been before Judge Turner. It is plain that the assumption he made (which has not been challenged) is that both letters, which he noted were in identical terms, accurately described the medical condition of the appellant's mother-in-law as at the dates on which the letters were written. He did *not* assume that the letter of 8 February 2019 was before Judge Turner, as ground 2 contends.
50. To the contrary, what Judge O'Hanlon plainly did was to consider for himself what the two letters showed about the condition of the appellant's mother-in-law as at the dates of the two letters. On the basis of his assumption (which has not been challenged) that both letters accurately described the medical condition of the

appellant's mother-in-law as at the dates on which they were written and given that the contents of the two letters were identical, he found (and this has not been challenged either) that the medical condition and care needs of the appellant's mother-in-law had not changed between the dates of the two letters. He said that "*it would appear that the medical condition and care requirements of the mother-in-law are unchanged since the determination made by Judge Turner*". He made that assessment on the basis of what Judge Turner had said in her decision about the medical condition and care needs of the appellant's mother-in-law. As I have said in relation to ground 1, Judge O'Hanlon's finding, that the medical condition and care needs of the appellant's mother-in-law were unchanged, has not been challenged.

51. I therefore reject ground 2. It fails to establish that Judge O'Hanlon had made any speculative assumption that the letter dated 8 February 2019 was before Judge Turner.

The remaining grounds

52. It is necessary to consider the following matters before turning to the remaining grounds:

- (i) Whether there was any *other* fresh evidence before Judge O'Hanlon.
- (ii) Precisely what of Judge Turner's findings were adopted by Judge O'Hanlon.

53. In relation to (i) above and as I have said above, the letter dated 5 February 2020 was not before Judge Turner and it may also be that the letter dated 8 February 2019 was not before Judge Turner. However, as I have also said already, the significant point is that Judge O'Hanlon correctly found that the medical condition of the appellant's mother-in-law was unchanged since the date of Judge Turner's decision.

54. There is no suggestion in Judge O'Hanlon's decision that there was any fresh evidence before him that showed that the sponsor's medical condition had changed for the worse, nor do the grounds contend that there was. The grounds contend that the sponsor is seriously ill. This simply ignores the fact that there is no suggestion that there was any evidence before Judge O'Hanlon that the sponsor's condition had altered for the worse in any material way since the date of Judge Turner's decision.

55. There is no suggestion in Judge O'Hanlon's decision that there was any fresh evidence before him concerning any obstacles that the appellant and the sponsor might experience in enjoying family life together in Pakistan, nor do the grounds contend that there was.

56. There is no suggestion in Judge O'Hanlon's decision that there was any fresh evidence concerning the quality of the appellant's private life in the United Kingdom or that she had strengthened or deepened her private life in the United Kingdom or her ties to the United Kingdom in any significant way in the period, just short of one year, that elapsed between the date of promulgation of Judge Turner's decision and the date of promulgation of Judge O'Hanlon's decision. The grounds do not suggest that there was any such fresh evidence. They merely contend that the appellant had strengthened her private life in the United Kingdom by virtue of having lived for a longer period in the United Kingdom since the date of Judge Turner's decision.

57. The period of just under one year that elapsed between the decisions of Judge Turner and Judge O'Hanlon is not such that it can be said, in the absence of any fresh evidence concerning the appellant's private life, that it is self-evident that there has been a significant or material change in her private life claim.
58. Indeed, I draw attention to the fact that there is no challenge to Judge O'Hanlon's finding (at para 34) that the appellant's application relies upon facts which were not materially different from those considered by Judge Turner in her decision.
59. In relation to the issue mentioned at para 52(ii) above, Judge O'Hanlon set out at para 26 of his decision the relevant part of the guidance in Devaseelan, summarised at my para 47 above. At para 25 of his decision, he said that he had considered all of the evidence both oral and written in the round before reaching his conclusions. He then went on to consider the evidence before him and made his finding (which is unchallenged) that the material facts were the same as they were as at the date of Judge Turner's decision. He then considered the new arguments raised before him that had not been specifically mentioned in Judge Turner's decision and said that he adopted the findings of Judge Turner "*in relation to all other issues*".
60. It is therefore clear that he adopted Judge Turner's findings that there were no insurmountable obstacles to family life being enjoyed between the appellant and the sponsor in Pakistan, that there were no very significant obstacles to the appellant's reintegration in Pakistan and that the respondent's decision was not disproportionate.
61. Put another way, he made his findings in line with the findings of Judge Turner, pursuant to the guidance in Devaseelan. He therefore followed the guidance in Devaseelan.
62. Having made the points above, I turn to the remainings grounds.

Ground 3

63. Ground 3 contends that Judge O'Hanlon interpreted the requirement to show "*insurmountable obstacles*" in a literal way, contrary to the decision on Agyarko [2015] EWCA Civ 440 where it was held that it was necessary for the "*...Rules to be interpreted in a sensible and practical rather than a purely literal way...*"
64. Ground 3 ignores the fact that Judge O'Hanlon made his findings in line with the findings of Judge Turner, pursuant to the guidance in Devaseelan.
65. I have noted that ground 3 does not contend that there was any change in the law as it existed or as it was applied by the courts in the period between Judge Turner's decision and Judge O'Hanlon's decision. It is difficult to see how that can be argued, given that the Court of Appeal's decision was appealed to the Supreme Court and that the Supreme Court's decision in Agyarko & others v SSHD [2017] UKSC 11 was delivered on 22 February 2017, i.e. before Judge Turner's decision was promulgated.
66. For the reasons given at paras 53-65 above, I have concluded that ground 3 does not establish that Judge O'Hanlon made any error of law. He was correct to follow the guidance in Devaseelan.

Grounds 4 and 5

67. Grounds 4 and 5 ignore the fact that Judge O'Hanlon made his findings in line with the findings of Judge Turner, pursuant to the guidance in Devaseelan. By adopting Judge Turner's findings, Judge O'Hanlon *did* make a finding, in line with Judge Turner's finding, that the appellant did not satisfy the requirements of para 276ADE(1)(vi) of the Immigration Rules.
68. Contrary to ground 4, the appellant *has* had judicial consideration of whether or not she satisfies para 276ADE(1)(vi), for the reasons given above paras 56-61 above.
69. It is not the case, as ground 5 contends, that Judge O'Hanlon failed to follow the step-by-step approach as laid down in Razgar and that he considered the issue "*in a throwaway line*". Given that he made his findings in line with the findings of Judge Turner pursuant to the guidance in Devaseelan, the decisions of Judge Turner and Judge O'Hanlon have to be read together.
70. I have therefore concluded that grounds 4 and 5 do not establish that Judge O'Hanlon made any error of law.

Ground 6

71. There is no substance in ground 6. The assertion in ground 6 and at para 1 of the appellant's written submissions, that the appellant had not made an in-time application to extend her leave "*due to devastating circumstances of the family*", is not only a bare assertion, it ignores the following: (i) that Judge Turner rejected the explanation in the appeal before her that the timing of the application was due to an oversight and that there was "*no sinister motive*"; and (ii) that Judge Turner said that she had to question whether the delay in making the application was a way of trying to circumvent the Immigration Rules by building up more time in the United Kingdom (para 43 of Judge Turner's decision).
72. The assertion in ground 6 that Judge O'Hanlon's decision was irrational is wholly untenable, given that:
 - (i) there was in reality no fresh evidence before Judge O'Hanlon;
 - (ii) the decision of Judge Turner was not successfully challenged;
 - (iii) all that had happened since Judge Turner's decision is that the appellant has lived in the United Kingdom for another period of almost a year; and
 - (iv) the material facts in the appeal before Judge O'Hanlon had not changed since the decision of Judge Turner.
73. Having rejected all the grounds, I dismiss the appellant's appeal.
74. Finally, the appellant's written submissions raise the following matters which were not mentioned or raised in the grounds:
 - (i) The un-numbered paragraph immediately before para 2 of the written submissions refers to "*a failure to have regard to relevant evidence*" and "*a*

failure to make findings on relevant facts". If the latter concerns ground 4, I have dealt with ground 4 above. The appellant does not otherwise have permission to advance these grounds which are in any event unreasoned.

- (ii) The penultimate paragraph of the appellant's written submissions states: "*On the issue of exceptionality, the Judge applied too high a threshold*". This is not the same as ground 6 which contends that Judge O'Hanlon's decision on proportionality was irrational. Accordingly, in my view, this constitutes an attempt to raise a ground in respect of which the appellant does not have permission. In any event, as I have said above, Judge O'Hanlon's assessment of the only new matter raised before him (that is, in relation to Beoku-Betts and Chikwamba, see paras 31-33 of Judge O'Hanlon's decision) was not challenged in the grounds. In the absence of such a challenge and in the absence of any evidence of a change in the material facts since the date of Judge Turner's decision, this ground does not establish any error of law in Judge O'Hanlon's finding, made in line with Judge Turner's finding, that the appellant's removal was proportionate.

75. Given that there was no evidence to show that there was any change in the material facts since the date of Judge Turner's decision, it is plain that the appellant's appeal before Judge O'Hanlon was a 're-run' of her appeal before Judge Turner. Indeed, it is difficult to see why para 353 of the Immigration Rules was not applied by the respondent to the appellant's application of 3 September 2019.

Notice of Decision

76. The decision of the First-tier Tribunal did not involve the making of any error on a point of law such that it fell to be set aside. The appellant's appeal to the Upper Tribunal is therefore dismissed.

Signed
Upper Tribunal Judge Gill

Date: 30 September 2020

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:
2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically)**.
3. Where the person making the application is in detention under the Immigration Acts, **the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.
4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically)**.
5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.
6. The date when the decision is "sent" is that appearing on the covering letter or covering email