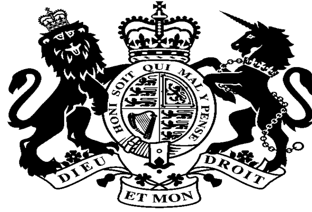

Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number:** HU/20212/2019

THE IMMIGRATION ACTS

Heard at George House, Edinburgh
on 14 December 2021

Issued on
On 04 January 2022

Before

UT JUDGE MACLEMAN

Between

GULNAZ AKHTAR

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

For the Appellant: Mr S Winter, Advocate, instructed by Burney Legal, Solicitors
For the Respondent: Mr M Diwyncz, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Pakistan, born on 1 June 1972. While in the UK as a visitor, she applied for leave to remain on private life grounds. She said that her brothers in Pakistan had appropriated her property there; she had health conditions such that she was unable to care for herself; and she needed the support of her adult son in the UK.

2. The respondent refused her application for reasons given in a decision dated 25 November 2019.

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3. FtT Judge Buchanan dismissed the appellant's appeal by a decision promulgated on 8 April 2020.

4. The appellant sought permission to appeal to the UT. The grounds may be summarised as follows:

   (1) Failure at [27] to have regard to material evidence; misunderstanding the evidence about the appellant's life in Pakistan.

   (2) Procedural unfairness; matters at [28, 31, 37, 42 and 62] which ought to have been raised at the hearing.

   (3) Irrational treatment of the evidence / irrational conclusions; at [29, 30, 32, 36, 38, 43, 44, 45, 47, 48 and 58] - disputing the judge's views on evidence from doctors, the appellant, and family members.

   (4) Failure to consider paragraph 276 ADE(1)(vi); no reasons on whether there would be very significant obstacles to the appellant's re-integration in Pakistan.

5. In a response dated 20 August 2020, the SSHD submits that none of the grounds discloses error on a point of law.

6. The grounds are far too long. They dispute the FtT's decision through many obscure points, most of them only disagreement. The grounds have led to adjournment for production of a transcript of the record of proceedings kept by the Judge, which has turned out to lead nowhere. Responsibility for delay in clarifying the appellant's challenge, however, does not lie with Mr Winter, who was instructed only recently.

7. Mr Winter did not insist on ground 1.

8. On ground 2, Mr Winter argued that in the paragraphs specified in the grounds, the Judge probed into unforeseeable intricacies of the evidence to reach adverse findings on matters for which the appellant had reasonable explanations, once asked.

9. There is something in the criticisms in terms of ground 2, although both the decision and the grounds tend to become over-involved in minute details and to lose sight of the overall issues decisive to the case. It is unnecessary to resolve that any further, because of the error in evaluating the medical evidence disclosed, and conceded, in terms of ground 3.

10. The appellant's principal item of medical evidence was a report by Dr U S Bedi, consultant psychiatrist, dated 18 February 2020, item 5, pp 13-22 of the appellant's bundle.

11. At [38] the FtT "notes that Dr Bedi's opinion is based entirely" on an interview, his instruction letter, and 3 letters from other doctors, not on observation of the appellant at home in her daily tasks. The FtT is "far from persuaded that he reasonably explains the methodology he has taken

in reaching his conclusion about the appellant's care needs. If … drawn only from what he was told … he does not expressly say so. If … drawn from observations … these are not documented or explained in the report". At [39] the FtT is not persuaded "by the medical evidence alone" of the appellant's need for care in everyday tasks. At [48(2)] the Judge says that considering his comments on Dr Bedi's report, "I attach little weight to his opinion".

12. Mr Diwyncz conceded that the decision does not fairly represent the medical report and is inadequate to explain its rejection.

13. That concession was fairly and correctly made.

14. Under the heading at page 4 of 10 of his report, "Mental state examination dated 15 February 2020", and the sub-heading "cognitive function", Dr Bedi narrates that he carried out "The Rowland Universal Dementia Assessment Scale" on which the appellant scored 18/30. He describes this as "a multicultural cognitive assessment scale" and the result as indicating "significant cognitive impairment". At page 6 he finds it difficult to assess the extent to which that impairment is caused by the appellant's severe depression. He recommends reassessment if memory problems persist after treatment for depression. He reaches no conclusion on whether dementia is present.

15. The report is explicitly drawn from observation and direct assessment as well as information from other sources. The author says at [23] that he has made it clear which facts and matters are within his own knowledge and which are not. I see no difficulty in reading the report accordingly.

16. Although the report is discussed in detail, its rejection is based mainly on absence of direct observation of the appellant in attempting daily tasks. I accept, from the submissions on both sides, that the decision does not adequately explain such a remarkably strong and comprehensive dismissal of a report by a highly qualified expert. This was a significant item of evidence going to one of the main issues.

17. The starting point was the rule for admission of elderly dependent relatives, which imposes several exacting tests. Having conceded that the resolution of the case on care needs could not stand, Mr Diwyncz also accepted that the decision did not resolve other critical points (such as non-availability of care in Pakistan) in such a way that the outcome must in any event have been the same.

18. The appellant's grounds did not look very promising at first sight, being mainly a long series of minor disputes. If the grounds had been more focused, it need not have taken so long to arrive at a conclusion. However, ground 3 does have the decisive point buried within it.

19. Ground 4 adds nothing significant and could not prosper on its own.

20. Parties agreed that the outcome should be as follows. Under section 12 of the 2007 Act, and under Practice Statement 7.2, the decision of the FtT is set aside. The case is remitted to the FtT for a fresh hearing, not before Judge Buchanan.

21. No anonymity direction has been requested or made.

Hugh Macleman

16 December 2021
UT Judge Macleman

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.