



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

**Case Nos: UI-2021-001827**  
**UI-2021-001828**  
**First-tier Tribunal Nos:**  
**HU/50843/2020 &**  
**HU/50857/2020**  
**IA/02120/2020**  
**IA/02153/2020**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 04 July 2023**

**Before**

**UPPER TRIBUNAL JUDGE RINTOUL**

**Between**

**MUBEEN ARSHAD**  
**MUHAMMAD ARSHAD**  
**(NO ANONYMITY ORDER MADE)**

Appellants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms Blockley, instructed by Macguire Solicitors  
For the Respondent: Mr A Mullen, Senior Home Office Presenting Officer

**Heard at Edinburgh on 22 March and 15 May 2023**

**DECISION AND REASONS**

1. The appellants appeal with permission against a decision of First-tier Tribunal Judge E J McLaren, promulgated on 21 October 2021.

**Remaking the Appeal**

2. The appeal reconvened on 22 March 2023 when evidence was heard from the first appellant. Owing to the failure of an interpreter to attend and difficulties with the video link it was not possible to hear evidence from the second appellant and accordingly the appeal was adjourned part heard until 15 May 2023.

3. Ms Arshad adopted her witness statement confirming that she lives with her father and a friend; she arrived in the United Kingdom at the age of 12 and is now 27. She said that she had very few family left in Pakistan on either side.
4. She said that she had set up her own business, selling accessories, online in 2017 but that she had had to stop this during Covid as she could no longer get stock. She said that her father had packed things for her and that after her business closed she was able to get another job, despatching and managing orders. She found that job through family friends earning approximately £600 a month. She said her father was working for the same company and that they worked together.
5. Ms Arshad said that she cooks for her father, does the washing, gets his medicine and cleans the house. She said that he cannot walk that far but does manage to get around the house. He was able to work as he had been sitting down to pack items.
6. Ms Arshad said that her father would not cope without her emotionally and that it would be difficult for her to marry as she would be expected to leave him.
7. Ms Arshad said that her mother was everything to her and that she shared everything with her. She said they were very close. She had been very close to her mother during her illness when she was in a lot of pain, helped change her clothes and take her to and from hospital. This had lasted for about four to five years and she had stayed with her in hospital as her mother did not speak English and she did. She said she had been very affected by her mother's death in 2016 and she used to cry a lot.
8. Ms Arshad said that she visited her mother's grave whenever she needed emotional support and on Fridays takes her father with her after Friday prayers. She goes two to three times a week in addition herself. She said that she feels peaceful when she visits and it takes a lot off her. She said she could not imagine not being able to visit, it was very important to her and that she just sits by the grave and prays. She does not want to tell people about this and she feels it felt so psychologically.
9. In cross-examination Ms Arshad said that she had been visiting the grave for over six years, that the pain had not diminished. After she had felt the need to see or get help for depression or bereavement counselling she said that she shares this but only with close friends who know the full story. She said that she had started work about the beginning of 2017, six months after her mother had died.
10. Ms Arshad said that she had needed to be close to the grave to remember her mother in her prayers and she needs the peace that she finds when she visits.

11. Ms Arshad said that has still got relatives in Pakistan but she is not in communication with them, she is not close to any of them. She said that she had not been pressed to marry by her relatives in Pakistan.
12. In response to my questions Ms Arshad said that her friends and family on whom she relies for support are people who had known firstly her mother since about 2012. She did not have anything similar in Pakistan and she felt that she might be pressured to marry if she returned to Pakistan.
13. Ms Arshad said that her mother had spoken to her mother by telephone and that although she has a brother in Saudi Arabia there was not much contact.
14. When the hearing reconvened I heard evidence from Mr Arshad who adopted his witness statement adding that his son had gone back to Pakistan before going to Saudi Arabi some seven to eight years earlier. He said that they talked on the phone occasionally. He had last seen his sister some five or six years ago.
15. Mr Arshad said that he had done packaging work for his daughter. He had made the labels and put things into boxes whilst sitting down, eight hours a day from Monday to Wednesday. He said that he has knee problems and has a heart problem for which he takes one tablet a day as well as asthma which he is being prescribed medication. He said his knee problems affect him making it difficult to go upstairs and that he is able to walk for only two to four minutes before taking a rest.
16. Mr Arshad said that he visits his wife's grave every Friday and that his daughter takes him there by car. Visits last some twenty minutes or so and that his daughter cries a lot whilst there. He just reads or recites the Koran, feels better and calm and that he would find it very difficult if he was unable to visit as would his daughter.
17. In cross-examination Mr Arshad said that his son who was age 26 or 27 is now living in Saudi Arabia. He had gone there after they had a disagreement and they had not had a good relationship at the time. He had no contact with his late wife's family and that he would not be able to revere his wife's memory without being able to go to the grave.
18. Mr Mullen relied on the refusal letter submitting that an inability to visit the grave of a wife or mother was not a sufficient basis to make removal disproportionate and that it is only rarely that a private life Article 8 claim could succeed. There were no compelling health conditions and removal was not disproportionate.
19. Ms Blockley submitted that Ms Arshad remains deeply affected by the death of her mother and that her wellbeing is tied to being able to visit the graveside two to three times a week. She accepted that this went beyond what would be termed normal grief but it had to be seen in the context of how the relationship had developed in the United Kingdom: she was the

only family female relative to whom she could turn, she had nursed her mother through her illness and she had been devastated by this. She submitted that being able to attend the grave was a fundamental part of how Ms Arshad lives her life here and it was now the case that she was in fact the primary carer for her father in that he relies on her every day. It was submitted that she would no longer be able to cope and that the public interest in her removal was limited. She conceded that although the appellant had now spent over half her life in the United Kingdom, that had not been the case when she was under 25. She submitted that she was now in a position that she had integrated ties to the United Kingdom and to Pakistan and that the circumstances of this case were such that removal will be disproportionate.

### **The Law**

20. It is for an appellant to demonstrate on the balance of probabilities that her removal would be in breach of the United Kingdom's obligations pursuant to article 8 of the Human Rights Convention.
21. In considering that issue I have regard to s 117B of the Nationality, Immigration and Asylum Act 2002 which provides:

#### **117B Article 8: public interest considerations applicable in all cases**

- (1) The maintenance of effective immigration controls is in the public interest.
- (2) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are able to speak English, because persons who can speak English—
  - (a) are less of a burden on taxpayers, and
  - (b) are better able to integrate into society.
- (3) It is in the public interest, and in particular in the interests of the economic well-being of the United Kingdom, that persons who seek to enter or remain in the United Kingdom are financially independent, because such persons—
  - (a) are not a burden on taxpayers, and
  - (b) are better able to integrate into society.
- (4) Little weight should be given to—
  - (a) a private life, or
  - (b) a relationship formed with a qualifying partner, that is established by a person at a time when the person is in the United Kingdom unlawfully.
- (5) Little weight should be given to a private life established by a person at a time when the person's immigration status is precarious.
- (6) In the case of a person who is not liable to deportation, the public interest does not require the person's removal where—
  - (a) the person has a genuine and subsisting parental relationship with a qualifying child, and

(b) it would not be reasonable to expect the child to leave the United Kingdom."

22. I bear in mind that the scope of this appeal is necessarily narrow. But equally I bear in mind that I must look at the circumstances of the case as at the date of this appeal.
23. In considering the issue of Article 8 outside the Immigration Rules I have applied the decision of the Court of Appeal in **Mobeen v SSHD [2021] EWCA Civ 886** at [43] to [50].
24. Unlike Judge McLaren I found no reason to doubt the evidence of either appellant. I did not find the answers given to me in response to the questions put were evasive albeit that they are relating to different matters from those parts of the evidence which Judge McLaren found to be problematic (see First-tier Tribunal decision at [17]). I bear in mind that nearly two years have elapsed since that hearing and that Mr Arshad is now 64 years of age. I accept that the appellants have a very close relationship, considerably closer than one might be expected between a father and an adult daughter but perhaps not unexpected given that they are alone together in the United Kingdom, separated from the rest of an extended family and united in grief over the death of wife and mother. That said, even whether a family life exists between these two appellants were in consideration, it is difficult to see that there would be interference with that family life were they to relocate to Pakistan together. The suggestion that Ms Arshad might have to leave her father if she were to get married is, to a significant degree, speculative.
25. It is not submitted that Ms Arshad's grief and her two to three visits a week to her mother's grave where she finds solace is untrue. There is a significant degree of consistency between the two appellants on this point. That said, the descriptions given of the extent of Ms Arshad's grief some seven years after her mother died are indicative of a deep grief which goes well beyond what might be expected. That is not a reason to disbelieve it.
26. There is significant merit in Ms Blockley's submission that being able to go to the grave where she gets solace and calm has become an intrinsic part of Ms Arshad's life. Whether she might benefit from counselling for bereavement is beside the point.
27. What I do not, however, have before me is any evaluation from a psychologist or a psychiatrist evaluating her current state of mind or the likely effect of separation. Thus, the only evidence I have for the effect that deportation would have on the appellant, Ms Arshad, is that evidence and her of her father's. I have not been told of any instances in which Ms Arshad was unable to visit the grave or what effect that had on her, I have not been told the situation has improved or got worse and I note that certainly in 2017 she was able to set up her own business, successfully, in effect I am being asked to speculate as to the likely effect on the appellant of being unable to visit her mother's grave. However I accept that being

unable to do so will have an effect on her but whether and for that matter Mr Arshad but it is difficult to quantify that; and, without knowing how deleterious the effect will be it is difficult to attach a significant weight to that.

28. I accept that what is involved in this case is aspects of private life and family life. As is clear from the case law it is only in an unusual case that interference with right to private life would be disproportionate.
29. In analysing whether removal would be disproportionate in this case I have undertaken a balance sheet exercise. In respect of Ms Arshad on her side I bear in mind that she arrived in the United Kingdom at the age of 12 and has now spent more than half her life here. She has developed significant ties to the United Kingdom and has limited ties with the country of her birth and nationality. She speaks English, she is employed and removing her from the United Kingdom will make it difficult, if not impossible, for her to visit the grave of her mother and she remains in deep grief. On the other side of the balance sheet significant weight has to be attached to the fact that Ms Arshad does not meet the requirements of the Immigration Rules. There is no interference with her family life.
30. In respect of Mr Arshad he has lived in the United Kingdom for fifteen years, he retains some ties to Pakistan. He too is still in grief over the loss of his wife and derives comfort from being able to visit her grave on a weekly basis which he would be unable to do were he to return to Pakistan.
31. In terms of the neutrality, there would be no dependency on the state given past employment and his daughter's ability to support him financially.
32. In terms of negative aspects the appellant does not meet the requirements of the Immigration Rules, he does not speak English.
33. In summary, the only factor which sets this case apart from the norm I have no doubt that it will be difficult for the appellants to adjust again to life in Pakistan having been absent for fifteen years. I accept also it would be significantly difficult for Ms Arshad given that she has grown up, had all her secondary education and has matured into a young woman in the United Kingdom and faces return to a country and into circumstances with which she has little familiarity. She faces been separated from a wider cycle of friends and family friends and no longer being able to get the emotional support of being able to visit her mother's grave two or three times a week. I am not, however, satisfied that taking all of these factors into account that the public interest in removing her is outweighed. Similarly I am not satisfied that the public interest in removing her father is outweighed either.
34. Accordingly, I dismiss the appeal.

**Notice of Decision**

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
2. I remake the decision by dismissing the appeals on human all grounds.

Signed

Date:

19 June 2023

Jeremy K H Rintoul

Judge of the Upper Tribunal  
Immigration and Asylum Chamber