OUTER HOUSE, COURT OF SESSION

[2017] CSOH 111

P1195/16

OPINION OF LADY WISE

In the Petition of

EQ (AP)

Petitioner

against

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Petitioner: McGuire; McGill & Co
Respondent: C Smith; Office of the Advocate General

23 August 2017

Background

[1] The petitioner is a national of Pakistan. He entered the United Kingdom lawfully in January 2007 on a 3 month visa. He re-entered lawfully on a 6 month visa in November 2007. Since the expiry of that second visa he has overstayed. On 1 April 2010 he apparently witnessed a murder and came to the attention of the authorities as a result. He first claimed asylum at that time. On 21 December 2011 the petitioner married a Pakistan national who was also present in the UK unlawfully and the couple have a son born 4 April 2012. An application for leave to remain in the UK submitted on 31 January 2014 was refused by the respondent on 21 May of that year.

[2] The present petition relates to a final decision ("the decision") of the respondent dated 13 September 2016 (No 6/9 of process) refusing the petitioner's application for leave to remain in the UK on the basis of his private and family life and certifying the application as "clearly unfounded" in terms of section 94(1) of the Nationality Immigration and Asylum Act 2002 ("the 2002 Act"). The petitioner seeks review of that decision, but only in relation to certification of his claim as clearly unfounded.

The Petitioner's Arguments

[3] Mr McGuire advanced six separate grounds of challenge to the decision and contended that if any one of them succeeded the first plea in law for the petitioner should be sustained. The first ground was that the respondent had failed to follow its own published guidance, issued to caseworkers on the circumstances under which a human rights claim can or should be certified as clearly unfounded. The relevant Guidance was produced at No 6/12 of process. Reliance was placed on the case of *Mandalia* v *Secretary of State for the Home Department* [2015] 1 WLR 4546 in which the UK Supreme Court (at paragraph 23) confirmed that where there is no dispute of primary fact, the question of whether or not a claim is clearly unfounded is only susceptible to one rational answer. If the court considers that the claim has a realistic prospect of success and the respondent has reached a contrary view, the court will necessarily conclude that the respondent's view was irrational. Further, where a public authority has issued a promise or adopted a practice which represents how it proposes to act in a given area, the law requires the promise or practice to be honoured unless there is good reason not to do so – *R (Nadarajah)* v *Secretary of State for the Home Department* EWCA Civ 1363, per Laws LJ at paragraph 68.

[4] The relevant Guidance on certification under section 94 (No 6/12 of process) includes a section headed "**Examples of when a human rights claim can be certified**" which states that

> "The fact that the Article 8 claim falls to be refused and there are no exceptional circumstances (or very compelling circumstances in deportation cases) does not itself make the claim clearly unfounded and it must not be certified on that basis alone".

The respondent's decision letter, contrary to that Guidance, had relied only on the absence of exceptional circumstances. Page 12 of the letter, having concluded that the petitioner does not fall within the Immigration Rules, contains the following statement:

> "Furthermore, all the points you have raised for consideration are not considered to be exceptional. In light of this and the considerations above, it is considered that your application for leave to remain on the basis of your Human Rights is clearly without substance and cannot succeed on any legitimate view."

Accordingly the respondent had relied only on the absence of exceptional circumstances which was not enough to certify the claim as clearly unfounded. Further, the Guidance provides examples of Article 8 claims not likely to be suitable for certification and these include the situation where "there are genuine obstacles to the applicant continuing family life outside the UK but these obstacles are not insurmountable." The decision letter fails to address that the end of medical treatment for the petitioner's child in the UK is a genuine obstacle. The petitioner's son suffers from speech and behavioural difficulties for which he is receiving long term therapy. The failure to consider this genuine obstacle at all is an error of law on the part of the respondent.

[5] The second ground is that the respondent applied the wrong test in determining the petitioner's application outside the rules. Initially the petitioner sought to argue that the test that appeared to have been applied was one of exceptionality. However, standing the recent decision of the UK Supreme Court in *R (Agyarko)* v *Secretary of State for the Home Department* [2017] UKSC 11, Mr Maguire accepted that a decision letter could properly use the term

"exceptional" in these circumstances so long as it is tempered with a proportionality assessment. He maintained, however, that the decision failed to disclose an adequate assessment of whether or not it would be proportionate to remove the petitioner and his family from the UK. He submitted that the absence of anything in the decision letter illustrating that the respondent had conducted the necessary balancing exercise between factors such as the legitimate aim of immigration control on the one hand and the best interests of the child ASQ on the other supported the contention that no adequate proportionality assessment had taken place.

[6] The third ground was that in reaching her decision the respondent had failed to identify and/ or consider the best interests of the petitioner's son, ASQ. In a Scottish appeal to the UK Supreme Court, *Zoumbas* v *Secretary of State for the Home Department* 2014 SC 75, Lord Hodge had paraphrased the principles in this area as follows:

> "(1) The best interests of a child are an integral part of the proportionality assessment under Article 8 ECHR; (2) In making that assessment, the best interests of a child must be a primary consideration, although not always the only primary consideration; and the child's best interests do not of themselves have the status of the paramount consideration; (3) Although the best interests of a child can be outweighed by the cumulative effect of other considerations, no other consideration can be treated as inherently more significant; (4) While different judges might approach the question of the best interests of a child in different ways, it is important to ask oneself the right questions in an orderly manner in order to avoid the risk that the best interests of a child might be undervalued when other important considerations were in play; (5) It is important to have a clear idea of a child's circumstances and of what is in a child's best interests before one asks oneself whether those interests are outweighed by the force of other considerations; (6) To that end there is no substitute for a careful examination of all the relevant factors when the interests of a child are involved in an Article 8 assessment; and (7) A child must not be blamed for matters for which he or she is not responsible, such as the conduct of a parent."

Importantly, Lord Hodge had then (at paragraph 13) added to those principles a comment that the decision maker is required to assess the proportionality of the interference with private and family life in the particular circumstances in which the decision is made. The

evaluative exercise in assessing the proportionality of a measure under Article 8 ECHR excludes any hard-edged or bright-line rule to be applied to the generality of cases. Secondly, in some cases an evaluation of the child's best interest might point only marginally in one direction rather than another. Thirdly, there may be circumstances in which the weight of another primary consideration can tip the balance and make the interference proportionate even where it has very severe consequences for children. Mr McGuire submitted that in this case, despite the references made to the child ASQ's best interests in the decision letter there had been no real proportionality assessment, in particular of whether it would be in ASQ's best interest to remain in the UK and not be taken to Pakistan. There had been no identification of the child's best interests at all.

[7] The fourth ground was that, even if the respondent had identified the child ASQ's best interests, she had failed to treat those best interests as a primary consideration. The principles in *Zoumbas* had not been followed and so the respondent had erred. What that decision required was first, identification of what was in the child's best interests and secondly, consideration of the factors that weigh for and against those interests prevailing. Issues such as a lack of legal basis for the child's staying in the UK were irrelevant to a best interests consideration.

[8] The fifth ground is that no reasonable decision maker could have concluded that it was not in ASQ's best interest to remain in the UK. A report dated 29 February 2016 from the Paediatric Development Clinic involved was relied on. It identifies autistic behaviour in ASQ and recommends that "all support" be continued at present. ASQ is now 5 years old and has lived in the UK all of his life. He has speech and language problems. The decision refers to speech therapy being available in Pakistan but it provides no indication of whether or not the child would be able to access that therapy, whether it would be suitable for his needs or of the

effect on the child of removing him from the UK thus depriving him of the speech and language therapy he has here. Once the medical position was considered, any reasonable decision maker would have concluded that it was in ASQ's best interests to remain in the UK.

[9] The sixth and final ground was that the decision to certify the petitioner's application as completely unfounded was irrational and/or unreasonable in a *Wednesbury* sense. Where, as here, there was no dispute of primary fact and only one rational answer is available, the court must ask itself the same question as the respondent asked herself. Reliance was placed on *ZT (Kosovo)* v *Secretary of State for the Home Department* [2009] 1 WLR 348 at paragraphs 21 - 23 in support of that proposition. No reasonable decision maker could have reached the conclusion on the undisputed facts in this case such as the length of the period of family life in the UK and ASQ's medical treatment here that the petitioner's claim was bound to fail. The decision should be reduced.

Submissions on behalf of the Respondent

[10] In support of her motion on behalf of the respondent to refuse the petition Ms Smith addressed first the contention that the respondent had failed to apply her own guidance in certifying the claim as clearly unfounded. She submitted that it was clear from pages 12 - 13 of the decision letter that the certification of the claim was based on the respondent's overall consideration of the claim. That was clear from the expression "…and the considerations above…" in the passage cited by Mr Maguire. The respondent had made an assessment of the quality of the claim; the failure to identify exceptional points and the detailed consideration that precedes the relevant passage are all taken into account in the decision to certify. Support for the focus being on the quality of the claim could be found in *FNG* v *Secretary of State for the Home Department* 2009 SC 373 at paragraph 10. The reference to the "considerations above"

could only mean that in addition to the points raised not being exceptional, the respondent considers the claim to be without substance. Reading the letter as a whole, it can be divided into three decisions; that the claim does not fall within the rules; that there is no good Article 8 claim outside the rules and finally that taking everything into account the claim is without substance and would be certified as clearly unfounded. There had been no failure to follow the relevant guidance.

[11] On the alleged failure to consider whether there were " genuine obstacles" to continuing family life outside the UK, it was submitted that the key question is whether the letter addresses the substance of that issue rather than whether that particular phrase appears. As a matter of style the respondent did not require to set out every consideration when following general guidance on a claim outside the rules, as distinct from the application of the rules when each step required to be stated. The issue of genuine obstacles was part of the overall consideration of proportionality that the respondent had to make. Importantly, the petitioner makes no averments about what treatment is or is not available for his son in Pakistan. It was not said that treatment there was not available, or too expensive or too difficult to access for some other reason. In a situation where the medical conditions of the petitioner and ASQ were not particularly serious, it was insufficient to claim only that they might not receive the same quality of treatment as that provided in this country. In the absence of any concrete information suggesting that the necessary treatment would not be available in Pakistan, the statements about ASQ's condition were not sufficient to constitute a genuine obstacle. In any event, even if the available treatment for ASQ's condition is better or more accessible in the UK than it is in Pakistan, that would not be a sufficient reason for removal to be resisted. Reliance was placed on *R (Razgar)* v *Secretary of State for the Home Department* [2004] 2 AC 368 at paragraph 4. In paragraphs 10 – 12 of the decision letter, the

respondent gives detailed consideration to the options available to the petitioner and to the child. The conclusion is made that medical care and treatment for both the petitioner and his son is available in Pakistan. In the absence of any challenge to that conclusion the averments in relation to the medical condition of ASQ (and the petitioner) were irrelevant. It was not an error of law for the respondent not to have repeated her conclusions on this point as a separate finding in the decision on certification.

[12] The petitioner's second substantive ground related to the contention that the respondent had erred by applying the wrong legal test in determining the claim. Reference was made to the Guidance issued by the respondent to case workers to assist them in determining human rights claims falling outwith the rules. That Guidance contains the following paragraph;-

> "Where the applicant does not meet the requirements of the rules refusal of the application will normally be appropriate. However, leave can be granted outside the rules where exceptional circumstances apply. Consideration of exceptional circumstances applies to applications for leave to remain and leave to enter. 'Exceptional' does not mean 'unusual' or 'unique'. Whilst all cases are to some extent unique, those unique factors do not generally render them exceptional. For example, a case is not exceptional just because the criteria set out in EX.1 of Appendix FM have been missed by a small margin. Instead, 'exceptional' means circumstances in which refusal would result in unjustifiably harsh consequences for the individual such that refusal of the application would not be proportionate. That is likely to be the case very rarely."

As the Guidance did not form part of the Immigration Rules and in light of its terms, it was clear that "exceptional circumstances" was not used to denote a legal test, rather it was just a phrase used in explaining how to approach a proportionality exercise. There was no particular difficulty with the use of the term "exceptional circumstances" as a heading at the start of a proportionality assessment section. The issue was whether the respondent's use of language was lawful. That it was lawful was put beyond doubt by the recent decision of the UK Supreme Court in *R (Agyarko)* v *Secretary of State for the Home Department* [2017] UKSC 11.

The Guidance (referred to as Instructions in the judgment) in question had been challenged in that case as imposing an unlawful requirement of "exceptional circumstances". That challenge was rejected by a seven judge bench of the UK Supreme Court, Lord Reed confirming (at paragraph 60) that the relevant provision in the Instructions involved the application of the test of proportionality to the circumstances of the individual case and so could not be regarded as incompatible with Article 8. Lord Reed then states that such a conclusion "… is fortified by the express statement in the Instructions that 'exceptional' does not mean 'unusual' or 'unique'..." It was clear from the decision letter in the present case that the relevant exercise had been carried out. Any omission related only to the lack of identification of factors favourable to the respondent such as the legitimate aim of immigration control. The absence of the word "proportionality" from the decision did not matter in light of the decision in *Agyarko.* In any event, pages 9 and 10 of the decision letter covers the relevant issues in the proportionality assessment favourable to the petitioner and gives reasons for discounting them as providing a sufficient basis for allowing leave to remain outside the rules. The context is clear from the paragraph at the top of page 9 of the letter which sets that as the context of what follows. There was no need to repeat every aspect of the proportionality assessment in that section. For example, the petitioner's poor immigration history would already be known to the reader from the chronological record of that on pages 2 and 3 of the decision. In considering whether the claim should be allowed outside the rules, the respondent was obliged to consider only whether there were features present that were not fully taken into account in the rules and that had been done. The respondent had addressed the correct issues and given them anxious scrutiny and so her decision should stand. Reliance was placed on the case of *S* v *Secretary of State for the Home Department* 2015 SLT 751, at paragraph 85.

[13] Ms Smith answered the third, fourth and fifth grounds advanced by the petitioner together as these all relate to the issue of consideration of the best interests of the child ASQ. It was submitted that the petitioner was wrong to suggest that the respondent had failed to identify and/or consider ASQ's best interests. Reference was made to pages 8 - 9 of the decision letter where a detailed consideration of the child's circumstances is set out. Specific reference is made at page 9 to section 55 of the Borders, Citizenship and Immigration Act 2009 and the duty to safeguard and promote the welfare of children, after which the child's position is narrated in sufficient detail. It is noted that ASQ is only 4 years old and is a national of Pakistan. Both his parents lived in Pakistan for some years and both speak the relevant language. Given his tender age, ASQ's private life will be predominantly centred round his parents. That was a reasonable conclusion to reach and based on what is well recognised about young children. Reference was made by counsel in this respect to *Amizi-Moayed and others (decisions affecting children: onward appeals)* [2013] UKUT 00197 at paragraph [1](iv). What the decision letter does is answer a claim setting out arguments in relation to what would be in the best interests of this particular child. It was implicit that all things being equal it would generally be in the best interests of a child aged 4 not to be moved from the UK where he has always lived. Against that background the letter lists the considerations that counter that position. There are insufficient factors when considering ASQ's interests as a primary consideration to render removal of the petitioner from the UK disproportionate.

[14] Counsel for the respondent described the petitioner's sixth and last ground as a "catch all" argument intended to impugn the decision to certify on the basis that it could not be said that the petitioner's claim was bound to fail. Such an argument could be seen as misconceived once the poor quality of the petitioner's claim was examined. Quite apart from the fact that

the petitioner and his wife are both Pakistani nationals and speak the relevant language, it was significant that they established family life in the UK when they both knew that the petitioner's immigration status was precarious. The decision to have a child was taken against the background of that precarious status. Their very young child would adapt to life in Pakistan, his primary focus being his parents. Neither the petitioner nor his son have serious medical conditions. Any immigration judge would conclude that the petitioner's claim was bound to fail.

Discussion

[15] Section 94(1) of the Nationality, Immigration and Asylum Act 2002 provides that the Secretary of State may certify a protection claim or human rights claim as clearly unfounded. The test for certification is whether the claim or claims is or are clearly unfounded – section 94(2). In *SN* v *Secretary of State for the Home Department* [2014] CSIH 7, the Inner House, having highlighted the problems of attempting to reformulate the test emphasised (at paragraph 17) the importance of following the statutory language. As the court's function in a case of this sort is one of review, it is possible to have a situation where the court might not have held a claim to be clearly unfounded but to conclude that the respondent had been entitled to find that the claim was clearly unfounded – *S* v *Secretary of State for the Home Department* 2015 SLT 651 at paragraph 38. Accordingly, the issue in this case is not so much whether or not the petitioner's claim is clearly unfounded, but whether the respondent was entitled to be satisfied that it was. The petitioner advances six arguments in support of his contention that the respondent erred in her approach and so her decision to certify cannot stand. I will deal with these in the order in which they were presented.

[16] The first issue is whether the respondent failed to follow the Home Office published guidance on certification. I accept that such a failure, without good cause or reason, would constitute an error of law. The petitioner contends that the respondent relied only on the absence of exceptional circumstances in certifying the claim as clearly unfounded. The guidance clearly states that the absence of exceptional circumstances is not, of itself sufficient to justify certification. However, the decision letter does not rely solely on the absence of exceptional circumstances. Following the conclusion that the points raised by the petitioner are not exceptional, the letter states that "In light of this and the considerations above…" the conclusion was that the claim was clearly without merit. The expression "in light of this" can only be a reference back to the assessment of the points raised as not exceptional. The conjunctive *"and"* signposts an additional reason why the claim is unfounded, namely "... the considerations above…". Those considerations are set out in some detail and cover the various arguments presented for an Article 8 claim outside the rules. As counsel for the respondent pointed out, the task of the respondent in section 94(1) cases is to assess the quality of the claim. As Lord Hodge put it in *FNG* v *Secretary of State for the Home Department* 2009 SC 373,

> "The focus of the statutory test is primarily on the quality of the claim rather than the prospects of success on an appeal. That is also the focus of the judicial paraphrases. The claim must be 'clearly' unfounded for the Secretary of State to certify. Thus if the Secretary of State came to the view that a claim fell to be rejected only on a fine balance of considerations, she would not be in a positon to say that it was clearly unfounded."

In this case, it is clear from the respondent's conclusion in the decision letter that she does not regard this as a finely balanced case at all, but one that is clearly without merit and bound to fail. The quality of the claim is assessed in detail and the decision to certify is not based on the lack of exceptional points but after taking all considerations into account. There is no requirement to repeat the considerations narrated and assessed earlier in the letter. So far as

the contention that there had been a failure to consider the genuine obstacles that would face the petitioner and his son on a return to Pakistan as part of the decision on certification, it is clear that the circumstances put forward by the petitioner as obstacles were all addressed. In particular the information about health issues in relation to the child ASQ were before the respondent, who considered those and listed (at page 11 of the letter) three centres at which speech therapy is available in Pakistan. She had concluded also (at page 9) that

> "…there are no impediments to your child entering into the healthcare system in Pakistan, moreover it is not considered disproportionate or unduly harsh for the child to relocate to Pakistan with his parents, a country of which he is a national…"

Nothing produced by the petitioner supports any contention that such a conclusion was wrong, the argument is that the failure was in not treating ASQ's condition and need for treatment as a genuine obstacle to a return. However, in the absence of a claim that there was some reason why treatment could not reasonably be accessed in Pakistan, it is difficult to see that ASQ's need for treatment could ever be a genuine obstacle to a return to that country. The respondent considered the substance of the factors said by the petitioner to constitute genuine obstacles and so cannot be said to have failed to follow the Guidance in this respect.

[17] The second ground was initially a claim that a test of exceptionality had been applied and that it was an error to do so. However, the decision of the UK Supreme Court in *R (Agyarko)* v *Secretary of State for the Home Department* [2017] UKSC 11 has clarified beyond doubt that the Guidance in question does not impose a test of exceptional circumstances but rather involves the test of proportionality. The petitioner continues to maintain that the proportionality assessment in this case was inadequate. However, I consider that this argument is misconceived. As clarified in *Agyarko* consideration of the points put forward by an applicant such as the petitioner necessarily involves a proportionality assessment. The decision letter must be read as a whole and when it is, the various factors relevant to that

assessment are all present. As counsel for the respondent pointed out, the reader of the letter has his attention drawn to the petitioner's poor immigration history early in the letter. A lack of specific reference to the respondent's legitimate aim of immigration control is not an important omission in the way that a failure to consider a factor favourable to the petitioner would be. The task of the respondent was to consider whether there were additional features in this case that would result in unjustifiably harsh consequences for the petitioner such that refusal of the application would not be proportionate. That was what the case worker is directed to do by the Guidance and that is what the UK Supreme Court has approved as involving a test of proportionality. In my view, it cannot be wrong for the respondent to focus on the circumstances put forward by the applicant and deciding whether there is something of substance to be weighed in the balance, as opposed to adopting a "tick list" approach where the factors that might militate against granting the application always have to be listed even where the consequences of a return claimed by the applicant to be harsh are not considered to be weighty enough to interfere with an otherwise clear decision for return. On the face of the decision letter, the respondent has set out carefully the factors raised that might render a return to Pakistan disproportionate and given a decision on each of them. That is sufficient in the context of the exercise in question.

[18] I will address the petitioner's third, fourth and fifth grounds together as they all relate to the respondent's approach to the best interests of the petitioner's son ASQ. The questions posed are (i) did the respondent fail to identify ASQ's best interests, (ii) even if she did identify ASQ's best interests did the respondent fail to treat them as a primary consideration and (iii) did the respondent reach a conclusion on ASQ's best interests that no reasonable decision maker could have reached, namely that it was not in his best interest to remain in the UK? The petitioner relies on the decision in *Zoumbas* v *Secretary of State for the Home*

Department 2014 SC 75 and in particular Lord Hodge's summary of the principles that apply to this issue which include that

> "It is important to have a clear idea of a child's circumstances and of what is in a child's best interests before one asks oneself whether those best interests are outweighed by the force of other considerations".

The relevant passage in the decision letter in relation to ASQ's best interests starts (at page 9) with an acknowledgement of the respondent's duty under section 55 of the Borders, Citizenship and Immigration Act 2009, the provision which requires the respondent to have regard to the need to safeguard and promote the welfare of children present in the UK in exercising her functions. The letter goes on to narrate the primary points raised about ASQ's interests, namely that he is 4 years old and has been living in the UK all of his life to date and states that "This has been carefully considered; however…" followed by a discussion of factors that in the respondent's view do not render the child's return to Pakistan inconsistent with his interests; his Pakistani nationality, his parents who are the centre of his private life being with him and in the absence of a claim to the contrary able to support him there and the availability of education and healthcare in Pakistan. The conclusion is then made that it is not considered disproportionate or unduly harsh for ASQ to relocate to Pakistan with his parents. From these passages it is tolerably clear that the respondent acknowledges that the best outcome for this child is to remain with his parents, perhaps optimally in the UK where he has lived since birth but that his interests will be well served in either country as there would appear to be no harsh consequences in his returning to Pakistan with his parents given the availability of education and healthcare there. Accordingly, I consider that there is sufficient in the letter to illustrate that the respondent identified and considered the best interests of the child ASQ. A proportionality assessment in relation to the specific issue of the impact on the child relocating to Pakistan was carried out and a conclusion reached. What matters is

whether the necessary proportionality assessment has been carried out, not whether the language used is formulaically correct. While the identification of ASQ's interests could have been expressed more clearly, I conclude that his interests were both identified and considered by the respondent and that she did not fall into error in these respects. That leaves the question of whether no reasonable decision maker could have reached the same conclusion as the respondent in relation to ASQ's best interests. It is important to understand the context in which the best interests of this child were being considered. It was as a distinct element of the proportionality assessment. The respondent's role was not to determine where the child's best interests lay and to act upon that determination, in the way that the court does in a private law dispute relating to children. Treating a child's best interests as a primary consideration means that they are considered first but they are not the paramount consideration and may be outweighed by the cumulative effect of other considerations. This was not a marginal case or one where there was a possibility of the child being separated from one or other of his parents depending on the outcome of the respondent's decision. The respondent did not decide that it would not be in ASQ's best interests to remain in the UK; she decided that, while having primary regard to the fact that he had always lived here it would not, for the reasons given, be disproportionate to remove him. The medical evidence relied on by counsel for the petitioner does no more than recommend that the various healthcare supports currently received by the child should continue. As already indicated, in the absence of material suggesting that such supports are not available and accessible in Pakistan, evidence of the child's condition could not result in there being only one proper conclusion in this case once the child's best interest were considered. None of the grounds relating to the child's interests justify interference with the decision made.

[19] The last ground for the petitioner was a general attack on the decision to certify as *Wednesbury* unreasonable or irrational. I accept in principle that in a case where there is no dispute of primary fact and only one rational answer is available, a decision contrary to that rational answer will be erroneous and cannot stand. However, on the facts identified in this case, I do not consider that the petitioner's claim has any prospect of success and the decision that it is clearly unfounded is one that seems to be rational. The petitioner's claim outside the rules is of poor quality standing the agreed history and background circumstances. While the arguments before the respondent included both the petitioner's own position in relation to the witnessing of a murder and the impact on him, the argument is not centred principally on the medical condition of his child. Again for the reasons already given, this is not something that could lead to only one conclusion in the absence of a challenge to the respondent's conclusion about the availability of education and healthcare in Pakistan.

Disposal

[20] For the reasons given, I will repel the petitioner's plea in law, sustain the respondent's second plea in law and refuse the petition, reserving meantime all questions of expenses.