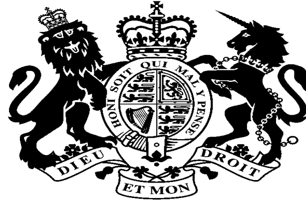

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/07284/2015

THE IMMIGRATION ACTS

Heard at Field House
On 13 November 2015

Decision and Reasons Promulgated
On 7 January 2016

Before

DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MUHAMMAD KHAN
(ANONYMITY ORDER NOT MADE)

Respondent

Representation:
For the Appellant: Mr S Kandola (Home Office Presenting Officer)
For the Respondent: Mr Z Jafar (Albus Law Solicitors)

FINAL DECISION AND REASONS

1. This is the appeal of the Secretary of State against the decision of the First-tier Tribunal of 26 August 2015 allowing the appeal of Muhammad Khan, a citizen of Pakistan born 2 April 1974, against the decision to make removal directions against him under Schedule 2 of the 1971 Act.

2. The Appellant's case as put to the First-tier Tribunal was essentially two-fold, both on asylum and private life grounds. His asylum claim was based on his fears at

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the hands of his uncle Sajjan Khan whose plans for his own son's marriage to the Appellant's sister, and for the Appellant's marriage to his own daughter, led to the Appellant's departure from Pakistan in September 1999 after sustained pressure and threats. Fighting between the families continued for three or four years and his uncle became a Marza Ahmadi, whereas the rest of the family were Sunni Muslims. The Appellant's sister was murdered at his uncle's instigation on 23 October 2008 following her marriage to someone other than his son. He no longer knew the whereabouts of Sajjan Khan who had left the family's village in 2008. On 15 December 2012 his uncle's men murdered the Appellant's brother Zaid Khan, and threatened his parents with serious harm if they failed to secure his return to Pakistan. Since then his uncle's men have returned to threaten and intimidate the family, and in March 2014 they beat his father severely, leading to his death. The Appellant's other brother has since told him that his uncle is now quite powerful with links to large political parties, and was involved with the robbery of mill workers on their return home from work.

3. Having noted that the Secretary of State's own country information report for 2014 corroborated the Appellant's account of the Watta Satta practice by which brides were exchanged between clans and tribes, defiance of the expectations of which might well end to honour killings, the First-tier Tribunal accepted the account of historical facts in so far as the original dispute between parts of the family had arisen. Given the First Information Reports relating to his sister's shooting, her death in the circumstances claimed was also credible, as was the Appellant's departure from Pakistan given the threats he would then have faced. However, the First-tier Tribunal did not accept that his uncle Sajjan had maintained a subsequent animus against him for so many years, absent corroborative evidence of the brother's or father's deaths.

4. As to the Appellant's private and family life claim, the judge noted that a subject access request had produced information that the Appellant had informed the Secretary of State that he wished to make an application on human rights grounds, in a note stamped 16 September 2005, but no subsequent action was taken by the Home Office.

5. As to his claim under the Rules, he had not established that he would face very significant obstacles to integration in Pakistan. Outside the Rules, he noted that the Appellant had established ties in the United Kingdom over the time he had been here, and that he lived with and cared for an elderly woman aged 85 (the mother of a friend of his) who suffers from kidney problems and her disabled son, in return for board and lodgings, from whom his expulsion from the United Kingdom would separate him. In oral evidence he said that he had been caring for these two individuals for a significant period, and that they had both suffered during the month over which he was detained.

6. The First-tier Tribunal found that this material it had been left unconsidered by the exceptional circumstances consideration within the refusal letter, and

consequently allowed the appeal because the decision was not in accordance with the law.

7. Grounds of appeal challenged this disposition of the appeal, because

   (a) There had been inadequate evidence to justify the conclusion that the Appellant had made an application in 2005 that had gone undetermined;

   (b) The statement in the refusal letter that there were no exceptional circumstances had represented an adequate consideration of the case for leave to remain outside the Immigration Rules.

8. Judge Lambert granted permission to appeal on behalf of the First-tier Tribunal on 16 September 2015 noting that there was arguable confusion in the analysis of the Appellant's private life claim outside the Rules, which had been considered by the judge for himself before deciding that the Secretary of State's own consideration had been inadequate.

Findings and reasons: error of law hearing

9. On a statutory appeal, the most usual ground relevant to issues arising under the Human Rights Convention is section 84(1)(g) of the Nationality Immigration and Asylum Act 2002, which requires an investigation into whether

   > "... removal of the appellant from the United Kingdom in consequence of the immigration decision would breach the United Kingdom's obligations under the Refugee Convention or would be unlawful under section 6 of the Human Rights Act 1998 as being incompatible with the appellant's Convention rights."

10. Once seized of jurisdiction, the Tribunal must allow an appeal in so far as it thinks that the relevant immigration decision is one that was not in accordance with the law (including immigration rules): see section 86(3)(a). However, it is clear that save in cases where there has been a serious breakdown in the procedure by which a case has been considered, or where unfairness or breach of statutory duty is present, this power is to be exercised very sparingly. As noted by the President in *Rodriguez (Flexibility Policy)* [2013] UKUT 42 (IAC), the Tribunal in *T (S.55 BCIA 2009 – Entry Clearance) Jamaica* [2011] UKUT 00483 (IAC) promulgated an instructive reminder of the distinction between the function of appellate tribunals and judicial review proceedings:

    > "[24] We would add further that the function of judges in the Immigration and Asylum Chambers of both the First-Tier and Upper Tribunals is to decide appeals, rather than supervise the exercise of public law functions by a general judicial review jurisdiction. When judges determine appeals they can decide what the material facts are and proceed from those factual findings to reach conclusions on the statutory grounds set out in Section 82 of the Nationality, Immigration and Asylum Act 2002".

11. This approach is consistent with that generally appropriate in appeals which turn on the compatibility of an immigration decision with obligations under international Conventions: thus in an asylum appeal, the judge must consider whether the immigration decision breaches the relevant international obligations, and so unless there is a serious procedural irregularity which requires a case to be reconsidered by the Secretary of State, an asylum appeal should be determined on its merits: see *AH (Paragraph 340 of HC 395, Cooperation) (Algeria)* [2000] UKIAT 00008.

12. In this appeal, the Secretary of State had arguably overlooked aspects of the Appellant's connections with the United Kingdom in so far as he referenced the care he provided for persons resident here. It seemed to me that that is the kind of relatively routine inadequacy in a refusal letter which it is the purpose of the appeal system to substantively resolve. The Appellant had every opportunity to put the entirety of his case before the First-tier Tribunal, and there is no reason to think that he had not availed himself of that facility. The situation is very different to that which might ensue from, for example, the scenario where the Secretary of State has failed to adequately discharge her duties in relation to a minor's best interests having regard to section 55 of the Borders, Citizenship and Immigration Act 2009, where, as discussed in *MK (section 55 – Tribunal options)* [2015] UKUT 223 (IAC), it may be thought more appropriate to secure a child's welfare by requiring the Home Office to look at a case again, quite possibly making their own enquiries into the whole picture to ensure that all relevant information is taken into account.

13. I accordingly found that the decision of the First-tier Tribunal contained a material error of law and that the appeal fell to be lawfully determined by the Upper Tribunal at a continued hearing.

14. At the continuation hearing the Appellant gave evidence. He said that the elderly people for whom he cared had no relatives of her own to care for them. One had just two brothers, of whom one was disabled; they lived around twenty minutes away from her by car. When he was not there they did not eat, they worried, and did not take their medicine. They were all British citizens.

15. Cross examined, he said that there was medical evidence available by way of a doctor's report on the people he cared for, but he had not brought it to court as his solicitor had not told him to do so. They would be willing to provide witness statements to support his case. He denied that he had only claimed asylum after he was detected working illegally: he had simply been present at a shop which he regularly visited when the immigration service came across him.

16. For the Respondent it was submitted that there was no reliable evidence about the support that he claimed to provide, either from the care-receivers themselves or from a medical source. In those circumstances this case could be dealt with under the Rules without reference to considerations outside them as there were no compelling circumstances such as to justify a second stage enquiry. Even the closest relatives caring for their own family members would receive no more than

six months' permission to remain under the Home Office guidance on Carers: there was no basis for a person to stay for a longer period to provide care for persons to whom they were unrelated. No evidence had been provided as to the non-availability of alternative care.

17. For the Appellant it was submitted that the First-tier Tribunal had accepted the fact of the care provided by the Appellant, and no challenge to those findings of fact had been made. It would be disproportionate to the private life of all involved to remove him in those circumstances.

Findings and reasons

18. At the outset of the hearing Mr Jafar sought an adjournment because the Appellant's solicitors had not seen fit to provide a witness statement from him to assist with the sole issue as to which the First-tier Tribunal had previously allowed the appeal, in relation to the care he provided to two disabled individuals. There was no explanation for their failure to do so, which is of particular concern given that Mr Jafar informed me that he had himself advised of the necessary steps following the hearing addressing error of law. It is self-evident that a case of this nature needs to be properly prepared. However, the matter has now been ongoing for a significant period and the Appellant himself must have been aware of how to progress his case having been well represented and advised by his counsel, whatever the failings of his solicitors, and additionally having been fully aware of the matters that originally concerned the First-tier Tribunal, having had notice of its decision since August 2015. I did not accept that it was in the interests of justice to let the matter be prolonged any further.

19. The Appellant's claim under the Rules falls to be assessed by reference to Rule 276ADE:

> "**Requirements to be met by an applicant for leave to remain on the grounds of private life**
>
> **276ADE**. The requirements to be met by an applicant for leave to remain on the grounds of private life in the UK are that at the date of application, the applicant: …
>
> vi) is aged 18 years or above, has lived continuously in the UK for less than 20 years (discounting any period of imprisonment) but there would be very significant obstacles to the applicant's integration into the country to which he would have to go if required to leave the UK."

20. Very little evidence has been put forward of any obstacles to the Appellant's ability to integrate back in the country. He has lived in the United Kingdom for no more than eleven years, taking his claim at its highest, and thus spent almost thirty years in his country of origin before travelling here. His family have been involved in a feud, on the findings of the First-tier Tribunal, leading to the tragic death of his sister. Clearly the existence of that feud will make it difficult for him to rely on any assistance in the future from his uncle Sajjan's side of the family.

However, this in itself does not mean that he lacks other extended family members who might assist him in the future. Besides, he is an adult who has been able to sustain himself for many years in the United Kingdom unlawfully, without the advantages of being able to assert the rights afforded by his nationality, and there is no reason to think that he could not successfully relocate to one of the numerous large cities in Pakistan which are doubtless home to many internal migrants; and he will be able to devote himself fully to his own sustenance without the continued burden of caring for others.

21. As to his claim outside the Rules, whilst it may be that it is relatively rare for an Article 8 case not to require that form of "second stage" consideration, I cannot accept that it would be appropriate to conduct that exercise here. Whilst I do not propose departing from the factual acceptance by the First-tier Tribunal of the care he claims to provide for two individuals, no detailed information has been provided as to the identity of those for whom he cares, their actual needs, and what alternative care might be available in his absence, either from relatives or the local authority. There is no evidence to suggest that the care he provides them represents a fundamental aspect of his own identity, though one may assume it has some significance to them. He has provided no detailed evidence of associations with the United Kingdom that could not reasonably be replicated on a return to his home country. In these circumstances it is not established that the immigration decision would arguably occasion any serious interference with the private life of any individual nor that such interference would be disproportionate.

22. The appeal is dismissed.

Signed: Date: 13 November 2015
Deputy Upper Tribunal Judge Symes