IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-004843

First-tier Tribunal No: HU/63007/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 31st of January 2025

Before

UPPER TRIBUNAL JUDGE RASTOGI

Between

Shafqat Sultana
(NO ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Mr S. Bellara, Counsel instructed by Talal & Co. Solicitors
For the Respondent: Ms S. Nwachuku, Senior Home Office Presenting Officer

Heard at Field House on 7 January 2025

DECISION AND REASONS

1. The appellant appeals with permission the decision of First-tier Tribunal Judge Russell ("the judge") dated 4 September 2024 in which he dismissed the appellant's appeal against the respondent's refusal of her human rights claim dated 30 June 2022 ("the decision"). The respondent's decision was dated 1 November 2023.

2. The context of the appellant's human rights claim is that she is a widowed national of Pakistan who has been in the United Kingdom since January 2022. She arrived on a visa to visit her daughter, son-in-law and three grandchildren. In May 2022, her home in Pakistan became the subject of a legal dispute with her husband's family, as a result of which the appellant feared returning. In addition, the appellant's physical and mental health deteriorated resulting in her needing the help of her family to complete everyday tasks. These factors gave rise to her application to the respondent, founded in the main on her facing very significant

obstacles to her reintegration in Pakistan and the strength of her family and private life in the UK.

The decision of the First-tier Tribunal

3. The judge heard oral evidence from both the appellant (who he treated as a vulnerable witness [6]) and her daughter. The judge confirmed he had the 783 page bundle plus some additional medical evidence [5]. The judge rejected the submission that the appellant was not able to return to her property due to the legal dispute for the reasons given at [17]. Those findings are no longer the subject of this appeal.

4. In considering the appellant's claim on health grounds, the judge specifically noted the medical evidence to which he had been referred [19]. At Mr Bellara's invitation, he also took into account the appellant's difficulties with mobility and personal care rather than her heart and blood pressure conditions [20]. As for the appellant's mobility issues, the judge noted at [21] that the evidence at its highest revealed "occasional dizzy spells and unsteadiness on her feet" and that the GP stated "these issues can be alleviated with a walking aid".

5. In terms of personal care, the judge noted at [22] the appellant's daughter's evidence as being "the appellant sometimes needs help to get out of the bed or bath and with washing clothes" and that her "social anxiety means she would not be prepared to accept this assistance from hired help in Pakistan". At [23] the judge said the evidence before him about the appellant's mental health did not support such a finding. He placed little weight on the report of the Independent Social Worker ("ISW") as it was based mainly on the appellant's self-reporting with no access to medical records [24]. For similar reasons he also placed only limited weight of the report of the psychological therapist [25], and he noted the appellant had been living with her mental health conditions in Pakistan since about 2017 [26]. The judge noted the lack of evidence about problems with private care in Pakistan and that the family had funds which could be used to pay for such care [27]. Therefore, the judge did not find the appellant able to show 'very significant obstacles' to her reintegration in Pakistan [28]; nor an ability to meet the substantive requirements of Appendix ADR (Adult Dependent Relative) [32].

6. Turning to the proportionality balancing exercise, the judge noted the weight to be attached to the public interest; that the appellant does not speak English and that little weight attaches to her private life as her stay here is precarious [34]. He accepted there was a family life between the appellant and her family [35] and that the best interests of the children are served by them remaining in the UK with their parents [36]. He noted that visits between the family members could continue as they had been and contact can otherwise be maintained [37] so concluded that the respondent's decision did not lead to unjustifiably harsh consequences [38].

The Grounds of Appeal

7. The grounds were unparticularised. Permission was granted by Resident Judge Feeney on 21 October 2024. In general terms, it is plain from her decision that RJ Feeney did not think much of the merits of the appeal save in relation to [22] when the judge referred to the appellant only "sometimes" needing help whereas

the daughter did not say that and her credibility appeared not to have been challenged. RJ Feeney did not limit the grant of permission.

8. Mr Ballara sought to refine the grounds relied on at the hearing before me. He limited the challenge to three primary grounds, which he then expanded to four, namely:

1. The judge erred in noting the evidence of the appellant's need for care arising only sometimes whereas it is clear from the evidence of the daughter and the medical professionals that her need for care is consistent (Ground 1);
2. The judge erred in only attaching limited weight to the report of the ISW (Ground 2);
3. The judge erred in finding that care in Pakistan would be available and affordable as he failed to carry out a proper assessment of those issues (Ground 3);
4. The judge failed to carry out a proper assessment of what was in the children's best interests and the family life between them and the appellant (Ground 4).

9. The respondent opposed the appeal on all grounds.

Discussion

10. It is clear from the refined way in which the appeal was presented at the hearing, that the appellant no longer challenged the part of the judge's decision relating to the legal dispute.

11. There is an overlap between some of the grounds of appeal. The appellant relies on the ISW report to challenge the judge's findings at [22] (Ground 1); the availability of the required care in Pakistan (Ground 3) and the best interests of the children (Ground 4). Therefore, I will deal first with Ground 2 and then, to the extent that it remains necessary, the remaining grounds.

12. Mr Ballara's primary submission on Ground 2 was that the ISW report was a lengthy report of some 24 pages and the judge dealt with it in 4 lines. In my judgement, there is little force in a submission based solely on length. There needs to be identification of specific parts of the report which the judge either overlooked, ignored or failed to deal with appropriately. As Ms Nwachuku submitted, much of the ISW's report narrated the family's wishes and cultural expectations. She submitted the substance of the report was relatively short and, in fact, revealed that the appellant functions to a reasonable level, helping out the family with cooking, childcare, and other chores.

13. Nevertheless, I have considered the content of the ISW report dated 20 June 2022. It was prepared within 6 months of the appellant arriving in the UK. The summary conclusion at [1.03] is that it is in the appellant's and her family's best interests if she be allowed to stay in the UK "to continue with her family life, the bonds and links she has established in the UK". This conclusion is not expressly founded on the appellant's need for care or the situation to which she would be returning in Pakistan, although it appears from the summary of her instructions at [2] that she was not asked to provide specific comment on either. As the judge noted, the ISW did not have sight of the appellant's medical records nor, it seems, the respondent's refusal letter [1.07].

14. As to the appellant's need for assistance with mobility, the ISW dealt with this at [7] where she noted the appellant's hypertension is controlled with medication; she has some mobility difficulties; she relies increasingly on other people getting her medication, shopping and running errands for her and she has support with her cleaning once a week.

15. As for her activities of daily living and daily living skills, the ISW noted that the appellant is currently meeting her own needs but, as she ages and her dependency increases, she noted the appellant would only feel comfortable with her daughter touching her or attending to her personal needs [7]. The ISW discussed research as to the benefit of care from family members, the impact of loneliness and that the family feel the appellant is increasingly vulnerable on her own in Pakistan [9]. Although the ISW sets out at the top of page 15 the impact on the appellant's of returning alone without anyone who would have her best interests at heart, the ISW does not comment that the appellant would be at physical risk due to a lack of assistance with her care needs.

16. At [10] the ISW noted that the appellant is able to "fulfil her role as grandparent. She cooks for the family, helps out with chores around the house and with childcare" which benefits the appellant's daughter and son-in-law. She assessed the relationship between the appellant and her grandchildren both "from what I observed and have been informed" and research on the impact of change upon children. She concluded that the grandchildren's "development, emotional and physical wellbeing is likely to be negatively impacted should Ms Sultana be forced to leave the UK" [10].

17. In my judgement, the judge gave clear reasons why he only attached little weight to the ISW report [24]. It is long established that it is for the judge to determine what weight attaches. In any event, the above analysis reveals little, if anything, in the content of the ISW's report which supported the appellant's position as to either her present need for consistent care or her social anxiety being such that she could not tolerate assistance from paid carers if that was what was required. In fact, at its highest, the ISW said she needs help with "her cleaning" once a week, but it is unclear whether this is cleaning in the personal sense of "washing" or whether it means cleaning her clothes or her room. In any event, this is linked to the appellant's mobility problems rather than her need for assistance with daily living needs in respect of which the ISW says she manages herself. Accordingly, even were the judge wrong to have attached such limited weight to the report, it would be immaterial as the report itself does not support the appellant's case as presently argued.

18. For these reasons, I do not find Ground 2 made out. For the same reasons, neither do I find Grounds 1 or 3 to be supported by reliance on the ISW report.

19. Turning to Ground 1, I asked Mr Ballara to direct me to evidence which said in terms that the appellant needs daily care as I was unable to locate any. Mr Ballara appeared to accept there was no such direct evidence, but he invited me to note there was no finding that the appellant's daughter lacked credibility and as GP herself, her evidence should have been given particular weight. He directed me in particular to paragraphs 10-11 of the daughter's witness statement dated 5 March 2024 which say as follows:

> “10. My mother has always been a very independent woman and has tried not to rely on anyone's help in raising me and looking after herself. This has instilled a sense of pride and privacy in her nature. Thus, she is extremely hesitant to ask for help for anyone else apart from me. She is a particularly private person when it comes to caring for her personal hygiene and she only trusts me with helping her get out of bed, or getting up from the toilet or bathtub in view of her weakening knees and joint pain.
>
> 11. She also struggles to wash her clothes, especially her private garments which she has always done herself because she does not like strangers touching her clothes or private garments. Now I do this for her because she is only comfortable with me washing and ironing her clothes. I see this dependency increasing with the passage of time as she can't do these hard chores by herself.”

20. It is important to recognise that the sponsor’s witness statement post-dates the ISW’s report by some 20 months and there was reference in the ISW’s report to the appellant and her family’s concern that the appellant’s needs will increase as she ages. I accept that may explain why there is a discrepancy between the two sources of evidence as to the extent of the appellant’s ability to manage some or all of her care needs.

21. However, it is plain from the appellant’s daughter’s witness statement, that notwithstanding what she says about the appellant’s difficulties, there are some aspects of daily living her mother is able to manage herself such as food preparation [6] and [7]. In any event, crucially, the sponsor does not deal with frequency in her witness statement. She does not say it is every time the appellant gets out of bed or the bath she needs help (or indeed how often she does so). Neither does she say, for example, that someone has to stay with her in the daytime to ensure that she can get on and off the toilet which would be the implication if she is unable to do this alone consistently. In this context, in my judgement, it is difficult to see how else the judge could have assessed frequency.

22. Upon my enquiry as to what evidence the judge should have considered when assessing the frequency of care, Mr Ballara only referred me to the ISW’s report. Nevertheless, for completeness, I note that the originally drafted Grounds challenged the judge’s findings at [21] on the basis that the judge had relied on the updated letter from Dr Khan from 27 August 2024 rather than the original one in the bundle dated 2 March 2024. I agree with Resident Judge Feeney’s comments at [2] of the grant decision when she said “there is nothing wrong with a judge relying on more up to date evidence “ given that the evidence needed to be assessed at the date of the hearing. Mr Ballara made no submissions about these letters at the hearing and it formed no part of his refined Grounds.

23. Taken the appellant’s evidence to which I have been referred at its highest, the appellant has failed to persuade me that the judge made a mistake of fact, or a finding which was not supported by evidence, when he said at [22] that the appellant ‘sometimes’ needs assistance. I find his choice of the word ‘sometimes’ to denote nothing other than a recognition from the evidence that the appellant had some difficulties. The evidence did not take the matter any further than that. For completeness, I cannot accept Mr Ballara’s submission that, without more, the appellant’s daughter’s evidence should have attracted greater weight simply because she is a GP. In any event, it is immaterial because on the evidence to

which I have been directed, the judge's findings accord with the appellant's case taken at its highest.

24. For these reasons, I do not find Ground 1 to be made out.

25. Turning to Ground 3, Mr Ballara confirmed that the appellant's case had been presented to the judge as one which, but for her presence in the UK, was capable of meeting the requirements of Appendix ADR. However, when I probed Ground 3 (which went to one of the requirements of Appendix ADR), Mr Ballara conceded this was not his strongest point bearing in mind there was no evidence before the judge as to the actual availability and cost of care in Pakistan. It follows that given the burden was on the appellant to show that the required care was not available or affordable in Pakistan, the judge was within his rights to conclude as he did at [27] that there was an evidential deficit. In any event, noting the content of the appellant's daughter's witness statement (para. 14), the judge's findings as to affordability were plainly justified in light of the evidence before him. In my judgement, Mr Ballara was right to recognise that this ground had less merit and insofar as it relates to the availability and affordability of private/professional care I agree. However, the basis on which the appellant's case was argued before the judge was less about the availability of private care and more about whether that would be acceptable to the appellant in light of her views and her social anxiety. However, given my findings about this part of the ISW's report not being capable of supporting such a finding and the lack of other evidence on this issue, I do not find Ground 3 to be made out on any basis.

26. That just leaves Ground 4. Given that the judge quite clearly made a finding as to what he found to be in the children's best interests, the appellant's criticism here can only really be that the judge erred by failing to find that the children's best interests included the appellant remaining in the UK with them. In my judgement, this argument cannot succeed. The judge specifically referred to the appellant's relationship with her grandchildren at [36] when dealing with the best interests of the child assessment. He noted they are close to the appellant but not that it amounted to a parental relationship. There is nothing wrong with that finding, as the evidence does not suggest that the appellant has a parental relationship with them. The judge accepted there is a combined family life in play [35]. He did not need to set out all the evidence about the nature of it and he can be assumed to have taken the relevant evidence into account. He has plainly done that as he has referred to and made findings about the nature of that relationship, albeit briefly. Having done so, he plainly did not feel that the grandchildren's best interests required the appellant's continued presence in the UK notwithstanding the view of the ISW of which the judge was plainly aware and in respect of which he only attached limited weight. Neither did he find the appellant's removal to lead to unjustifiably harsh consequences. The appellant has failed to persuade me the judge fell into error here. In my judgement, the judge's conclusions were open to him on all the available evidence.

27. For these reasons I do not find Ground 4 to have merit.

28. In conclusion I do not find the appellant to have identified any errors on points of law in the judge's decision, let alone any material ones.

Notice of Decision

1. The decision of the First-tier Tribunal does not contain any errors of law and the decision stands.

SJ Rastogi
Judge of the Upper Tribunal
Immigration and Asylum Chamber
28 January 2025