Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/20042/2018 (V)

THE IMMIGRATION ACTS

Heard remotely from Field House	**Decision & Reasons Promulgated**
On 9 September 2021	**On 11 October 2021**

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

MUKHTAR BEGUM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the appellant: Mr J Holt, Counsel, instructed by Reiss Solicitors
For the respondent: Ms A Everett, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. This is the re-making decision in the appeal of Ms Begum ("the appellant"), a Pakistani citizen born in 1947, who had sought entry clearance to join family members (specifically her son, Mr Haq Nawaz, "the sponsor") in the United Kingdom. The application for entry clearance was deemed to be a human rights claim and this was refused by the

respondent on 3 September 2018. The First-tier Tribunal dismissed the appeal against that refusal. However, by a decision promulgated on 24 February 2021, I concluded that the First-tier Tribunal had erred in law and that its decision should be set aside. My error of law decision is annexed to this re-making decision.

The issues

2. Although I set aside the First-tier Tribunal's decision, a number of findings made by the judge have been preserved:

(a) the appellant suffers from dementia and other physical ailments;

(b) care needs would not be appropriately met by a placement in a residential care home in Pakistan;

(c) the sponsor is able to maintain and accommodate the appellant if she were to reside in the United Kingdom.

3. This is an appeal which is based solely on Article 8. Ultimately, the core question is whether it would be disproportionate to prevent the appellant from coming to the United Kingdom to live with the sponsor. In answering this question, I will have regard to the relevant Immigration Rules ("the Rules"), in particular the Adult Dependent Relative provisions within Appendix FM to the Rules (, the ADR Rules") together with paragraph 276ADE(1)(vi), which, submits Mr Holt, is capable of assisting the appellant's case. Beyond the scope of the Rules, I will consider the appellant's case on a wider view, incorporating a balancing exercise in which all relevant factors will be considered on a cumulative basis.

The evidence considered

4. I have considered the documentary evidence contained in two bundles provided by the appellant back in 2019, AB1, indexed and paginated 1-163 and AB2, indexed and paginated 1-60, together with a recent witness statement from the sponsor dated 7 September 2021 and the respondent's original appeal bundle.

5. Although a number of witnesses (all relatives of the appellant) attended the remote hearing, only the sponsor was called to give evidence. At the outset of the hearing, Mr Holt confirmed the identity of these potential witnesses. I make two brief observations here. First, appellants' representatives should endeavour, as a matter of good practice, to inform both the Tribunal and the respondent in advance of a hearing who will be attending and who will be giving live evidence. It is potentially unfair on the respondent to be confronted with a long list of witnesses at the outset

of a hearing. Second, if witnesses are intended to be called, there must be witness statements for them which have been filed and served in advance.

6. In this case, and in large part through the pragmatic and flexible approach adopted by Ms Everett (as is her custom), no difficulties arose. She confirmed that she would have no questions for the witnesses other than the sponsor. On this basis, Mr Holt confirmed that only the sponsor was to be called. Having said that, and without opposition from Ms Everett, I was content to treat as being adopted, the witness statements/letters of the other witnesses, Mr Shah Nawas, Ms Robina Shahnawas, Mr Adnan Ali and Mr Hadar Ali.

7. The sponsor gave evidence with the assistance of an Urdu interpreter and I was satisfied that they understood one another throughout proceedings. The sponsor adopted his recent witness statement and answered questions from Mr Holt, Ms Everett, and me. In summary, he provided information about the appellant's circumstances during his stay in Pakistan between January and July 2021. This included attempts at arranging care for the appellant. He explained that whilst family members had in the past been able to visit Pakistan to help out, this was not always possible and Covid-19 had made matters much more difficult.

Submissions

8. Ms Everett was concise in her submissions. In light of the preserved findings, the issue here was narrow: could appropriate care be arranged for the appellant at her home in Pakistan? Ms Everett suggested that it was surprising that no one had been found who could provide appropriate care in that setting. There was a lack of clarity as to the appellant's actual situation at the moment. Overall, it was said that appropriate care could be arranged and that the respondent's decision had been and remained proportionate.

9. Mr Holt relied on his skeleton argument. He asked me to accept that the evidence provided by the sponsor was credible. There had, it was submitted, been a genuine effort to find people to assist the appellant whilst family members were not in Pakistan. Those efforts had proved unsuccessful. In light of these efforts and the medical evidence from 2019 (it was accepted that no new evidence had been provided since then), appropriate care could not be provided. It was submitted that the appellant was probably currently living below the standard contemplated by the ADR Rules.

10. In addition, Mr Holt submitted that paragraph 276ADE(1)(vi) of the Rules could apply even though the appellant was not in the United Kingdom. If it could not apply directly, it was nonetheless possible, he submitted, for me to consider, on a hypothetical basis, whether or not the appellant would be

able to satisfy that provision if she were in the United Kingdom. This assessment would inform the overall proportionality exercise.

11. I record here my gratitude to both representatives for the clear and concise way in which they have presented their respective cases.

12. At the end of the hearing I reserved my decision.

The relevant legal framework

13. The relevant provisions of the ADR Rules state:

> "E-ECDR.2.5. The applicant or, if the applicant and their partner are the sponsor's parents or grandparents, the applicant's partner, must be unable, even with the practical and financial help of the sponsor, to obtain the required level of care in the country where they are living, because-
>
> (a) it is not available and there is no person in that country who can reasonably provide it; or
>
> (b) it is not affordable."

14. Paragraph 276ADE(1)(vi) of the Rules provides:

> "276ADE (1). 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:
>
> (i) does not fall for refusal under any of the grounds in Section S-LTR 1.1 to S-LTR 2.2. and S-LTR.3.1. to S-LTR.4.5. in Appendix FM; and
>
> (ii) has made a valid application for leave to remain on the grounds of private life in the UK; and
>
> …
>
> (vi) subject to sub-paragraph (2), 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."

15. There is case-law on the ADR Rules, including Ribeli [2018] EWCA Civ 611. This body of law confirms that appropriate care will involve consideration of the particular needs of the individual, that emotional needs can be taken into account if there is a causal link with medical conditions, and that the ADR Rules impose a "rigorous and demanding" standard.

16. Case-law also indicates that whilst and ability to satisfy a relevant Rule will in most cases be dispositive of an Article 8 appeal, and inability to do so

will not be fatal, although it is a relevant factor accounting against an appellant.

Findings and conclusions

17. First, I refer back to the preserved of fact relating to the decision of the First-tier Tribunal. These narrow down the scope of the findings which I now need to make.

18. As a whole, I find that the evidence provided by the sponsor and the other individuals has been honestly stated. It is clear that they have the appellant's best interests at heart and that they see these as requiring her to come to the United Kingdom to live with them. On a purely human level, that is entirely understandable and, it might be said, commendable. Having said that, this state of affairs does not of itself render the respondent's decision disproportionate.

19. I find that the sponsor and other family members in the United Kingdom have travelled out to Pakistan to stay with and help the appellant over the course of time. The evidence shows that there have been relatively extended periods of such residence, including, most recently, the sponsor's six-month stay this year. I accept that it is not easy to make such arrangements and that these might place certain strains on the family in this country, financially and otherwise. However, it is more likely than not that such visits could continue in the short to medium term, as they have occurred in the past. The burden (if that is the appropriate term) of going to Pakistan has not fallen solely on the sponsor's shoulders and need not do so in the future. In so finding, I have taken the Covid 19 situation into account. This will clearly have made visits more difficult. Yet it did not prevent the sponsor from making his lengthy visit earlier this year. Further, whilst there is of course no guarantee as to what may occur, it is not unreasonable to assume that the Covid-19 situation will improve in the foreseeable future.

20. My finding does not extend to the possibility of any of the United Kingdom-based family members permanently relocating to Pakistan. In light of the evidence, this would not be necessary (even if it was reasonable).

21. As to the medical evidence, I have considered the hospital letters from 2019, referred to in my error of law decision. It is, I am bound to say, somewhat surprising that no updated medical evidence has been sought or provided. The Shaafi Hospital letter dated 11 May 2018 is brief and leaves a number of unanswered questions, given the evidence as a whole. For example, whilst it is said there that the appellant was unable to "take food and medicines by herself", it would certainly appear as though she has been able to undertake these tasks, at least during what would appear to be relatively extended periods when there has been no live-in care at her home. There is no clear evidence from any professional (or indeed the

sponsor) to indicate actual neglect, ill-health caused directly by an inability to eat and/or take medication, or a danger to self. The hospital letter dated 9 September 2019 is more detailed, but does not mention the ability to take nutrition certain other matters. It does state that the appellant needed full-time care from "at least two female attendants" in order to help her with her overall needs. The appellant's circumstances have not, however, been updated by way of medical report or what might be described as a care needs assessment by any other body all private providers.

22. I do of course take into account the fact that dementia is a progressive condition and it will not have improved since 2019. This is confirmed by the inexpert (but honest) evidence from the sponsor. That is not to say that I should assume that the situation has deteriorated. I do not make such an assumption.

23. The foregoing leads me to the important question of the attempts made by the family to arrange for appropriate live-in care for the appellant in Pakistan.

24. On the sponsor's evidence, attempts in the past to arrange care have been unsuccessful. It is said that one individual had in fact stolen from the appellant. I am prepared to accept that this occurred. As to more recent attempts, the sponsor told me that he had undertaken the following during his last visit to Pakistan:

(a) approached a 15/16 year old boy who only seemed to have worked for "a few days" before leaving;

(b) found a woman with an eight-month old baby who wanted other members of the family to come and live in at the appellant's house. This was not possible and so the lady left;

(c) asked what was described as an "older relative" to help. However, the appellant ended up "helping" the lady instead and the arrangement did not work out.

25. As far as I could tell, no further arrangements were put in place before the sponsor had to come back to the United Kingdom in order to have a medical test here.

26. Having considered matters in the round, and intending no disrespect to the sponsor or other family members in this country, I have come to the conclusion that the evidence does not demonstrate that appropriate care for the appellant in her own home could not be arranged through reasonable efforts. My reasons for this conclusion are as follows.

27. First, I accept that the United Kingdom-based family are not particularly affluent. However, as a collective body, there are funds which have been and can be utilised for the appellant's care in Pakistan. The cost must

presumably be relative to the general costs/standards of living in that country. I have no independent evidence from the appellant on this issue and I am having to draw what I consider to be a reasonable inference.

28. Second, there is no evidence from either the family or any other company/organisation in Pakistan confirming what, if any, enquiries have been made as to the recruitment of appropriately suitable/qualified/professional carers for the appellant. The sponsor asserted that there were no such "professionals", although he accepted that they may be present in cities. That may be his honestly held view, but it is not in my view sufficient. They have not been relevant enquiries made. I find it unlikely in the extreme that no such carers would exist, even outside of major cities. Further, Mirpur city is a sizeable urban area in any event.

29. Third, and following from the last point, there is no independent evidence to demonstrate that appropriate care for this particular appellant is unavailable in Pakistan, through a lack of provision or prohibitive cost.

30. Fourth, the attempts made by the sponsor during his last visit to Pakistan rather speak for themselves as regards a lack of what I consider to be reasonable steps to seek appropriate care provision for the appellant. The first attempt related to a teenage boy. That, it seems to me, was obviously inappropriate. The reliability of a 15/16 year old would be open to question. The hospital letter from 2019 has suggested two female attendants, which makes an approach to a teenage boy appear incongruous. It is entirely unsurprising that this arrangement lasted only "a few days".

31. The second attempt was to approach a woman with a young baby. I was not told about her experience/qualifications/general suitability for a caring job. Again, it appears as though she was not suitable, given her familial circumstances. This, with respect, might have been apparent from the outset.

32. The third and final attempt was in some ways as inappropriate as the first. The sponsor contacted a relative who was older than the appellant herself. It is rather telling that the appellant ended up helping the older relative.

33. Fifth, the hospital letter indicated that the appellant required round-the-clock care by two female assistants. A difficulty in the appellant's case is that 24-hour care has never seemingly been provided since 2019 and that at no time have the family sought to actually employ two female live-in carers at the same time. The evidence before me does not indicate that, notwithstanding was identified in the hospital letter the appellant has been a danger to herself, or that her health has significantly deteriorated as a result of a lack of care, and it does indicate that she has in fact been left alone for not insubstantial periods of time.

34. Sixth, I take into account Mr Holt's submission that the appellant may have been living at a sub-standard level over time, when assessed against the test stipulated in the ADR Rules. The evidence itself does not actually bear this out. Mr Holt has suggested that the appellant may now be living in sub-standard conditions or circumstances, when compared to the level contemplated by the ADR Rules. That is a relatively difficult issue to address, in part because of the lack of updated medical or other relevant evidence from Pakistan. In light of the evidence as a whole and my specific assessment of aspects thereof, I do not accept that she is living in the circumstances which are materially below those reasonably experienced by persons living in Pakistan in general or her home area in particular. This involves me drawing what I consider to be reasonable inferences as to living standards (given the lack of independent evidence), and I take the appellant's age and health into account. As discussed previously, the evidence does not show that she is suffering from self-neglect, or that she is a danger to herself or others. Nor does it show that she is living in sub-standard accommodation. All-told, I do not consider her current living circumstances to constitute a basis for success under the ADR Rules or a particularly strong or compelling feature of her wider Article 8 case.

35. Seventh, there is very regular communication between the appellant and her family in this country. In terms of the taking of medication, there is no reason why she cannot be assisted by messages or telephone calls by family members at appropriate times of the day.

36. Eighth, Mr Holt has put forward the perfectly respectable argument that appropriate care might act as an indicator of the unavailability of such care in Pakistan. To put it another way, how many times must a family try before the ADR Rule or Article 8 on a wider basis can be satisfied?

37. I have no difficulty with the general concept of that position. There will undoubtedly be cases where, on the evidence provided, numerous and reasonable attempts have been made to arrange suitable care for an individual in their country of origin, but without success due to, for example, the cost, unavailability of suitable, all the specific nature of the individuals care needs. The all-important proviso is the nature of the evidence provided in any given case. Here, that evidence, whilst honestly provided, is not, for the reasons stated above, sufficient to discharge the burden (on the balance of probabilities) of showing that suitable care is not available in Pakistan.

38. The consequence of my conclusion on the availability of care in Pakistan is that the appellant cannot satisfy the ADR Rules. This in turn acts as what I consider to be a significant factor against her when it comes to the assessment of proportionality on a wider basis. The Rules reflect the Executive's view of where the balance lies between the interests of individuals on the one hand and those of the public on the other. Numerous authorities make it clear that significant or "considerable" weight should be afforded to the respondent's view of where the balance

lies when the Rules are deemed to be compatible with Article 8 (see, for example, paragraphs 47 and 48 of Agyarko [2017] Imm AR 764).

39. As to paragraph 276ADE(1)(vi), I conclude that it cannot apply in the appellant's case. The wording of the provision itself clearly indicates that it relates to persons already in the United Kingdom. I also reject Mr Holt's point concerning a hypothetical assessment. It is artificial to place the appellant in the United Kingdom and then ask whether she would face very significant obstacles to a re-integration into Pakistani society. The fact is that she is already integrated into that society by virtue of her life-long residence there. It is true that she is elderly and is unwell. However, that of itself would is not rendering her "an outsider". There is no evidence to suggest that she has been rejected by her community. Indeed, the opposite seems to be the case: they have helped her on a fairly regular basis over the course of some years now. The need for suitable care does not act to create very significant obstacles to continued integration.

40. My conclusion that paragraph 276ADE(1)(vi) cannot be satisfied does not count against the appellant. The provision simply cannot apply to anyone in the appellant's situation. It is not a relevant factor one way or the other.

41. I now turn to additional matters. I accept that the sponsor would be able to maintain and accommodate the appellant were she to come to the United Kingdom. Given the nature of dementia, I hold a concern that, in the course of time, her dementia will in fact require residential care and therefore a cost to the public purse, but I do not factor this into my assessment as it is too speculative at this juncture. The ability to maintain and accommodate cannot in my judgment be considered a particularly weighty matter in the appellant's favour when considering proportionality, however. If the appellant was in the United Kingdom and I was considering section 117B(3) of the 2002 Act, financial independence would be regarded as a neutral factor. Non-recourse to public funds if an individual were to come to this country from overseas cannot in my view represent anything much beyond neutrality.

42. As regards the appellant's probable inability to speak reasonable English, I regard this as simply a neutral factor given her age and state of health.

43. I take account of the evidence from all the family members in this country as to their concern for the appellant and their desire have her live with them. I accept that there are close familial bonds already, and that the appellant's presence in the United Kingdom would be likely to strengthen these. There would be an increased opportunity for younger members of the family to spend more time with the appellant.

44. All of the factors resting on the appellant's side of the balance sheet, when considered individually and cumulatively, do not go to outweigh the strong public interest in maintaining effective immigration control, which itself is an inability to satisfy the ADR Rules.

45. It follows from the above that the respondent's decision to refuse the human rights claim was and remains proportionate and that the appellant's appeal must be dismissed.

Anonymity

46. The First-tier Tribunal made no anonymity direction and there is no sound reason for me to do so. I make no such direction.

Notice of Decision

47. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law and that decision has been set aside.

48. I re-make the decision by dismissing the appeal on Article 8 ECHR grounds.

Signed: H Norton-Taylor Date: 10 September 2021

Upper Tribunal Judge Norton-Taylor

TO THE RESPONDENT FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed: H Norton-Taylor Date: 10 September 2021

Upper Tribunal Judge Norton-Taylor

ANNEX: ERROR OF LAW DECISION

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/20042/2018 (V)

THE IMMIGRATION ACTS

Heard remotely by Skype for Business **Decision & Reasons Promulgated**

On 12 February 2021

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Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

MUKHTAR BEGUM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the appellant: Mr J Holt, Counsel, instructed by Reiss Solicitors
For the respondent: Mr S Kotas, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant, a citizen of Pakistan born in 1947, appeals against the decision of First-tier Tribunal Judge A K Hussain ("the judge"), promulgated on 20 November 2019, by which he dismissed the appellant's appeal against the respondent's refusal of her human rights claim, made in the context of an application for entry clearance as an adult dependent relative of her son ("the sponsor") who resides in the United Kingdom. The human rights claim was made on 26 May 2018 and the refusal decision is dated 3 September of that year.

The judge's decision

2. In many respects, the judge's decision is careful and thorough. In summary form, the following relevant findings of fact were made:

a) the appellant suffered from dementia and other ailments as result of which she required long-term personal care;

b) she lived in a house of which she had ownership;

c) she had been living alone and without any home help since February 2017;

d) previous attempts at employing home carers had proved unsuccessful due to the unreliability of services provided;

e) the appellant was assisted by neighbours who checked in on her four or five times a day, took her to see her doctor if required, and could assist in trying to employ home carers. This arrangement could continue;

f) she had siblings residing in Pakistan, two of whom lived a significant distance away whilst the other resided some 40km from her house;

g) it would be possible for the appellant to move closer to her siblings;

h) there was "no indication" that the siblings could provide the requisite care required by the appellant;

i) care home provision in Pakistan was available and affordable;

j) the appellant's family in the United Kingdom travelled to Pakistan relatively frequently and assisted with the appellant's care whilst there;

k) the sponsor would be able to adequately maintain and accommodate the appellant were she to reside in the United Kingdom.

3. Following on from the findings of primary fact, the judge correctly directed himself to the relevant Immigration Rules, namely E-ECDR.2.4 and 2.5 of Appendix FM. Satisfaction of the former was common ground between the parties.

4. In respect of E-ECDR.2.5, the judge concluded that whilst care homes in Pakistan existed and were affordable, such a solution would not meet the

appellant's needs, particularly on an emotional and psychological level (see [36]).

5. At [37] the judge asked himself the question as to whether the present situation surrounding the appellant's personal care needs could continue into the foreseeable future. He concluded that the assistance of the neighbours indicated "some commitment" to those needs. If, however, this source of support was not viable, the judge went on to conclude that the appellant's siblings could step in as substitutes for the neighbours. They, like the neighbours, could help to arrange home carers and check in on the appellant at regular intervals. The fact that home carers had proved unsatisfactory in the past did not preclude a more positive outcome in the future. In all the circumstances, the judge concluded at [39] that:

> "… the appellant can with the practical and financial help of the sponsor, his son, his brother and their families in the United Kingdom as well as her family in Pakistan, obtain the required level of care that she needs in Pakistan."

6. As result of this conclusion, the appellant was unable to satisfy E-ECDR.2.5 of Appendix FM. The judge went on to address Article 8 outside the context of the Rules and concluded that the respondent's decision was proportionate. The appeal was duly dismissed.

The grounds of appeal and grant of permission

7. In essence, the grounds of appeal challenge two aspects of the judge's conclusions. First, it is said that he failed to address relevant medical evidence, particularly a letter from the Shaafi Hospital, dated 9 September 2019 ("the hospital letter"), which stated that the appellant required full-time care from immediate family members and that this would involve at least two female carers. Second, the judge is criticised for failing to adequately address the limited nature of the assistance provided by the neighbours and/or the possibility of her siblings acting as substitutes.

8. Permission to appeal was granted without restriction.

9. There has been no rule 24 response from the respondent. Therefore, the judge's conclusion that a placement in a care home would not be appropriate stands unchallenged.

The hearing before me

10. Mr Holt relied on the grounds of appeal. He submitted that the essential problem with the judge's analysis and conclusions was the failure to address the hospital letter. Went to the issue of the nature of the care required by the appellant. The judge had focused entirely, and

erroneously, on the ability of the neighbours, and possibly the siblings, to assist in whatever way they could. Such help was incongruent with the appellant's actual needs. Mr Holt also submitted that the judge had failed to take any proper account of the fact that past attempts had simply not worked.

11. Mr Kotas submitted that the judge had adopted a balanced and careful approach to the evidence and that his conclusions were sound. The hospital letter was thin and substance but it was in any event tolerably clear that the judge had taken it into account. The judge was not required to address what might be the perfect scenario for the appellant, but had simply to reach a conclusion as to level of care which would reasonably meet her needs. The assistance provided by the neighbours could indeed continue. There was nothing perverse in the judge's findings or conclusions.

Decision on error of law

12. I conclude that the judge has erred in law by failing to have any, or any adequate, regard to the hospital letter, or, alternatively, by failing to provide any, or any adequate, reasons for rejecting this evidence, when setting out his findings and conclusions. My reasons for this conclusion are as follows.

13. It is clear that the judge was aware of the hospital letter; it is referred to at [6] and [21]. The latter reference is in the context of the finding that the appellant suffered from dementia. Nothing is said at that point about the nature of the care required as result of that condition.

14. I acknowledge the point made by Mr Kotas to the effect that it should be presumed that the judge had the hospital letter in mind when making his findings and reaching his conclusions, even if it is not expressly referred to after [21]. However, whilst the letter is undoubtedly light on detail, it nonetheless states in clear terms that the appellant required "full time care from her immediate family members" and that this should be provided by "at least two female attendants." The standing of the author and the diagnosis of dementia had been accepted by the judge. There was no on the face of the evidence not also to have accepted the doctors opinion as to the nature of the care required. In light of the foregoing, the hospital letter constituted a central item of evidence in the appeal and required express consideration when the judge's conclusions were set out.

15. When the judge came to assessing the assistance provided by the neighbours, nothing is said about the hospital letter and the author's opinion. This omission has to be set in the context of what help the judge found the neighbours to have been providing: checking in on the appellant four or five times a day; taking her to her doctor when necessary; and having attempted to arrange home carers in the past. None of these

activities, whilst commendable, amounted to actual direct care for the appellant's daily needs. In that sense, the judge was not comparing like with like.

16. It follows from the foregoing that the failure to expressly address the hospital letter constitutes an error. Alternatively, if it were the case that the judge had hospital letter in mind, there is an absence of adequate reasons for rejecting the relevant aspects of this evidence.

17. The same error afflicts the judge's consideration of any assistance the siblings may have been able to offer. Whether or not the appellant moved home to live closer to any of them was in reality rather beside the point. That is because the judge himself accepted that these individuals would not have been able to provide the personal care required by the appellant. All they could have done was to seek to replicate the help provided by the neighbours. Thus, the potential import of the hospital letter and the failure to address it bears relevance to this alternative scenario as well. There is an error of law here.

18. As to the question of whether home help could be arranged in the future, I agree with Mr Kotas to the extent that past problems would not be decisive of successful future provision. On the other hand, the history of unreliability was a relevant factor. In my judgment, the judge has failed to take this into account. In any event, of paramount significance in the determination of the appeal was the appellant situation as at the date of hearing and, at most, the short-term future. The previous unsuccessful attempts at employing home carers, combined with the actual role undertaken by the neighbours (and potentially the siblings), went to further highlight the need to expressly engage with the hospital letter and what it said about the nature of the care required.

19. Mr Kotas cited the lack of detail in the hospital letter. He is right to have done so. If the threshold of materiality was higher than it is, I might well have concluded that the judges errors should not result in his decision being set aside. However, the test is relatively low. In my view, the hospital letter *might* have made a difference to the outcome; I am certainly not concluding that it *would* have (see Degorce v HMRC [2017] EWCA Civ 1427; [2018] 4 WLR 79, at paragraph 95).

20. In all the circumstances, I set the judge's decision aside.

Disposal

21. Mr Holt suggested that if the decision were to be set aside, the appeal should be remitted to the First-tier Tribunal. Mr Kotas urged me to retain the matter in the Upper Tribunal.

22. Having regard to paragraph 7.2 of the Practice Statement and all the circumstances of the case, I have concluded that the appropriate course of

action is to retain this appeal in the Upper Tribunal and have it listed for a resumed hearing.

23. The following findings made by the judge are preserved:

a) the appellant suffers from dementia;

b) the appellant's overall needs would not be met by a placement in a residential care home in Pakistan;

c) the sponsor is able to maintain and accommodate the appellant if she were to reside in United Kingdom.

24. My provisional view is that the resumed hearing can fairly be conducted on a remote basis. However, I will issue directions to the parties relating to this issue, amongst others (see below).

Anonymity

25. The First-tier Tribunal did not make an anonymity direction and there is no reason for me to do so. I make no such direction.

Notice of Decision

26. The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

27. I set aside the decision of the First-tier Tribunal.

28. I adjourn this appeal for a resumed hearing in the Upper Tribunal.

Directions to the parties

1) **No later than 7 days** after this decision is sent out to the parties, the appellant may fil's e and serve any objections to the resumed hearing being conducted on a remote basis. **At the same time**, the appellant is directed to confirm whether it is intended to call any further oral evidence and, if it is, whether an interpreter will be required;

2) **No later than 14 days** after this decision is sent out to the parties, the respondent may file and serve any objections to the resumed hearing being conducted on a remote basis;

3) Any further evidence relied on by either party shall be filed and served **no later than 28 days** after this decision is sent out to the parties. Such evidence must be accompanied by a notice under rule 15(2A) of the Tribunal Procedure (Upper Tribunal) Rules 2008;

4) **No later than 7 days** before the resumed hearing (in whatever form it may take), the appellant is to file and serve a skeleton argument;

5) With liberty to apply.

Documents or submissions filed in response to these directions may be sent by, or attached to, an email to [email] using the Tribunal's reference number (found at the top of these directions) as the subject line. Attachments must not exceed 15 MB. This address is not generally available for the filing of documents.

Service on the Secretary of State may be to [email] and to the original appellant, in the absence of any contrary instruction, by use of any address apparent from the service of these directions.

Signed: H Norton-Taylor Date: 23 February 2021

Upper Tribunal Judge Norton-Taylor