



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal number: EA/04616/2019 (P)

THE IMMIGRATION ACTS

Heard Remotely at Manchester CJC
On 13 August 2020

Decision & Reasons Promulgated
On 24 August 2020

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

ALI ASIF KHAN
(ANONYMITY ORDER NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr Z Malik, instructed by Chauhan Solicitors

For the Respondent: Ms R Pettersen, Senior Presenting Officer

DECISION AND REASONS (P)

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The order made is described at the end of these reasons.

1. The appellant, who is a Pakistani national born on 14.1.75, has appealed with permission to the Upper Tribunal against the decision of the First-tier Tribunal promulgated 5.2.20, dismissing his appeal against the decision of the Secretary of State, dated 20.8.19, to refuse his application made on 20.5.19 for a Derivative Residence Card

as the primary carer of his British citizen mother, pursuant to Regulation 16(5) of the Immigration (EEA) Regulations 2016.

2. The specific requirements for a derivative right to reside under the Regulations are (a) that the appellant is the primary carer of a British citizen; (b) that the British citizen is residing in the UK; and (c) that the British citizen would be unable to reside in the UK or in another EEA State if the appellant left the UK for an indefinite period.
3. For the reasons set out in the decision, at [46] the First-tier Tribunal Judge rejected as totally implausible the claim that if the appellant had to return to Pakistan his mother would go with him. At [48] the judge concluded, for the reasons given at [47], that the appellant had failed to establish on the balance of probabilities that his mother would be unable to continue residing in the UK if he were removed for an indefinite period.
4. The grounds as drafted first asserted that the judge erred in taking into account the appellant's immigration history, and that of his mother and siblings, "*despite agreeing in open court that it was not relevant.*" I was concerned that there was no evidence to support this assertion and note that it was Mr Malik himself who represented the appellant at the First-tier Tribunal. However, at the outset of the hearing Mr Malik advised that he had not drafted the grounds and was not pursuing this point.
5. The other grounds, as drafted, argued that the judge erred in overlooking significant evidence including the expert's report, the GP's letter of 7.11.19, and the sibling witness statement, and failed to note that the sponsor did not require Social Services help when she was living with her son, daughter-in-law, and daughter.
6. In granting permission to appeal on all grounds, First-tier Tribunal Judge Haria considered it "*arguable that although the judge noted the expert's report [31], the judge erred as asserted and failed to consider the expert's report and the GP's letter dated 7 November 2019 and thus failed to correctly apply the test of compulsion.*"
7. At the hearing before me Mr Malik made 4 succinct points:
 - a. The judge failed at [31] to consider the expert report or provide adequate reasons for ignoring it;
 - b. The judge failed to take into account the impending change of circumstances, that if the appeal failed the appellant would be returning to Pakistan and that the mother had said that in that case she would want to follow him;
 - c. The judge failed at [47] to take into account the sibling evidence that they would be unable to support their mother;
 - d. The judge took into account irrelevant matters, namely the immigration history of the sponsor and siblings, reference being made to [41] of the decision.
8. In reply, Ms Pettersen submitted that the judge was not obliged to address every part of the medical evidence, a lot of which confirmed the uncontentious medical condition of the sponsor. It was clear from the decision that the judge was fully aware of the evidence and that it had been taken into account. With regard to the sibling evidence,

Ms Pettersen pointed out that previously the sponsor had gained residence by asserting dependence on her other son and his wife and did not require any additional help when living with other family members. It was submitted that it was open to the judge to look at the wider family history.

9. I have carefully considered the impugned decision in the light of these submissions as well as those parts of the documentary evidence drawn to my attention before making my decision. I set out below my reasons for finding no error of law in the decision of the First-tier Tribunal.
10. I first bear in mind that weight to be accorded to evidence is a matter entirely for the judge. Further, that the judge is not required to address every issue, provided that it is clear that the evidence has been considered in the round and cogent reasons are given for the findings made and conclusions reached. There is a difference between a mere disagreement as to the conclusions reached and an error of law in failing to take into account evidence. In Durueke (PTA: AZ applied, proper approach) [2018] UKUT 00197 (IAC), the Upper Tribunal held that *"permission should only be granted on the basis that the judge who decided the appeal gave insufficient weight to a particular aspect of the case if it can properly be said that as a consequence the judge who decided the appeal has arguably made an irrational decision."* Further, *"Particular care should be taken before granting permission on the ground that the judge who decided the appeal did not "sufficiently consider" or "sufficiently analyse" certain evidence or certain aspects of a case. Such complaints often turn out to be mere disagreements with the reasoning of the judge who decided the appeal because the implication is that the evidence or point in question was considered by the judge who decided the appeal but not to the extent desired by the author of the grounds or the judge considering the application for permission. Permission should usually only be granted on such grounds if it is possible to state precisely how the assessment of the judge who decided the appeal is arguably lacking and why this is arguably material."*
11. In assessing the credibility of the claim that if the appellant were required to leave the UK he would take the sponsor with him to Pakistan, at [41] of the decision the judge stated, *"Before I find whether I should accept those declarations as credible, I need to put them in the context of this family's immigration history, the circumstances in which the sponsor was living in the UK and what awaited her if she made the choice to accompany the appellant to Pakistan."* The grounds and Mr Malik's submissions argued that such a consideration is not in line with the Regulations, that it is contrary to what the judge had agreed, and that it deprived the appellant of the opportunity to satisfy the judge on any concerns arising from the immigration history.
12. Whilst past immigration history is not a criteria under Regulation 16(5), it was certainly open to the judge to take into account the immigration history when considering the credibility of the claim that the sponsor would return to Pakistan with the appellant; I am satisfied that there is no error in that regard.
13. In relation to the expert report, I note that Dr Waheed is a GP and not a consultant and that her specialisation qualifications appear to relate to gynaecology and obstetrics.

However, I accepted Mr Malik's submission that she was a registered forensic examiner and for the purposes of this case can be regarded as an expert.

14. Nevertheless, I observe that the 'Summary and Opinion' does not state that the sponsor would be unable to remain in the UK and receive the care she needs if the appellant were removed from the UK. Amongst other ailments of age, she suffers from arthritis in her shoulders and knees. Whilst she is said to be reliant on the appellant, the report notes that social services did not deem 24-hour care necessary, but suggested that carers could attend several times a day and wear a nappy to help manage her toileting requirements. The opinion of Dr Waheed is that to her this "*seems substandard care,*" and points out that carers would not be able to prepare her meals as her son does but would merely warm up food. The doctor also considered the advice to wear a nappy humiliating and not compatible with the sponsor's desire to perform her Islamic prayers in a clean and purified state. "*In my opinion the level of full time attention and care provided by a close relative, such as her son can never ever match the care which can be provided by carers going in a few times a day.*"
15. The GP letter of 7.11.19 was a referral to a consultant orthopaedic surgeon and does not take the appellant's case much further, as the statement that he is his mother's main carer can only be what has been reported to the doctor. Of significance perhaps is that the consultant noted that the sponsor had previously declined surgical intervention (arthroplasty) for her knees, despite being wheelchair bound as a result. It would appear that had she accepted surgery she would not need a wheelchair. However, as things are, all activities of daily living are said to be compromised. The consultant offered cortisone injection but if she declined surgical intervention, as the consultant anticipated she would, the sponsor would be discharged back to GP care. Nothing in this part of the medical evidence demonstrates that without the appellant the sponsor would be unable to remain in the UK.
16. With respect to the doctor, the expert report does not address the crucial issue. It does not indicate that the sponsor's care needs are such that were the appellant to be removed she would be unable to remain because she would not be able to access necessary care. Whether she would want or desire to follow her son to Pakistan, as suggested by Mr Malik, is not at all the same thing as being unable to reside in the UK. Further, there is a world of difference between what is desirable in terms of treatment or care and what is necessary or essential. It is clear from [18], [31] and [47] of the decision that the judge had considered the medical evidence, none of which demonstrates that the appellant's absence from the UK would prevent her from receiving the care she actually needs, as opposed to the care she would wish to have at the hands of her son.
17. In reaching this conclusion, the judge took into account the availability of Local Authority assistance and that the sponsor has the families of her son and her daughter to provide additional help. Whilst their witness statements gave various excuses as to why they could not provide the support it is claimed the sponsor needs, it rather appears that it suits each of the son and daughter for the appellant to provide the care

which she was previously receiving from them. In this, I bear in mind the point made by Ms Pettersen, that the sponsor obtained leave to remain as a dependent of her other son and his wife. The daughter claims that as she has four children to look after she could not care for her mother. The son claims that as he works 60-70 hours a week, he could no care for his mother. However, I am satisfied that it was entirely reasonable and not an error for the judge to consider that at least some support could be provided by the appellant's siblings. There is no evidence that the judge merely ignored their evidence. Even the busiest people in the world must surely have some time to spare to visit a close family member on a regular basis.

18. Having carefully considered the evidence and the submissions, I am satisfied that the judge did not ignore or leave out of account any relevant part of the evidence. As stated above, it was not necessary for the judge to address this evidence in detail. However, even if the judge had addressed the medical and other evidence in greater detail, I am satisfied that on the facts of this case it could have made no material difference to the outcome of the appeal. The issue that the appellant's representatives appear to find difficult to grasp is that it is not whether the present level of care can or will be replicated, but whether the sponsor would be unable to remain in the UK, specifically in this case because of an inadequacy of care, were the appellant be required to leave. Even taken at its highest, the evidence adduced before the First-tier Tribunal failed to demonstrate that sufficient and appropriate care would not be available to the sponsor in the UK. In the premises, there is no material error of law in the way in which the judge addressed the evidence.
19. In the circumstances and for the reasons set out above, I find no material error of law in the decision of the First-tier Tribunal so that it must be set aside.

Decision

The appeal to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands and the appellant's appeal remains dismissed on all grounds.

I make no order for costs.

I make no anonymity direction.

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 20 August 2020

