



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004980

First-tier Tribunal No: HU/00510/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
14th March 2024

Before

UPPER TRIBUNAL JUDGE HANSON

Between

HAMIDA BEGUM
(NO ANONYMITY ORDER MADE)

Appellant

and

AN ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Ms Bardon, instructed by Royals Solicitors.

For the Respondent: Mr Diwnycz, a Senior Home Office Presenting Officer.

Heard at Phoenix House (Bradford) on 8 March 2024

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Curtis (the Judge), promulgated on 17 August 2023, in which he dismissed the appellant's appeal against the refusal by an Entry Clearance Officer (ECO) of her application for entry clearance as an adult dependent relative. The application was made on 15 September 2022 and refused on 18 January 2023.
2. The appellant is a citizen of Pakistan born on 1 January 1947 who wishes to join her daughter, Ms Asmaa Chaudhry ('the sponsor') in the UK.
3. The Judge notes the appellant claims to live alone in Lahore in Pakistan, to have heart problems, anxiety and depression and cognitive issues, that she needs help for her personal care, but has no family in Pakistan to carry that out. The appellant claimed her daughter, the Sponsors is in the UK, and that her son is in the USA but not in contact with the family. The appellant acknowledges she has help from neighbours but claims that is not adequate. It was her case she met the requirements for a grant of entry clearance as an adult dependent relative.
4. Having considered the evidence with the required degree of anxious scrutiny the Judge sets out findings of fact from [16] of the decision under challenge. At [17] the Judge notes the principal issue in dispute between the parties was whether or not the appellant met the requirements of paragraph E-ECDR.2.4

- and 2.5 of Appendix FM and/or whether the appeal ought to be allowed by reference to Article 8 ECHR outside the Immigration Rules.
5. The Judge notes the relevant part of paragraph E-ECDR.2.4 reads “*the applicant... must as a result of age, illness or disability requires a long-term personal care to perform everyday tasks*” and that the relevant part of paragraph E-ECDR.2.5 reads “*the applicant... 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 provided, or b) it is not affordable.*”
 6. The Judge goes on to analyse the evidence before concluding at [30] that he was not satisfied that either the appellant nor the sponsor had been truthful when they claimed the sponsor’s brother had disappeared to the USA and has no contact with them since, specifically finding that he is in contact with his family.
 7. The Judge goes on to find that the appellant’s health needs are not significant and that the evidence did not establish that those issues, or her age or other disabilities, caused material impairment to the appellant’s ability to care for herself, as a result of which she could not meet the requirements of paragraph E-ECDR.2.4 [33].
 8. The Judge goes on to consider, in the alternative, that the appellant could also not meet the requirements of paragraph E-ECDR.2.5 as the sponsor sends her the sum of £100 every month, and confirmed she will continue to send those sums, and it was clear from the statements that that was more than sufficient for the appellant’s living expenses. The Judge notes the appellant lives in a house owned by her late husband with no rent to be paid, that carers have been employed in the past and it even if they have had a bad experience with one or two of them, that the appellant and Sponsor can afford to pay for them. The Judge concludes that care is therefore available and affordable [34].
 9. In respect of Article 8 ECHR the Judge concludes having analysed the evidence and relevant legal principles that the strength of the public interest in maintaining effective immigration control is greater than the strength of the appellant and sponsor’s family life and that any interference with their right to respect for family life is both necessary and proportionate [39].
 10. The appellant applied for permission to appeal which was refused by another judge of the First-tier Tribunal and renewed to the Upper Tribunal. The appellant relied on the original together with additional grounds. Permission to appeal was granted by Upper Tribunal Judge Pitt on 25 January 2024.

Discussion and analysis

11. On 6 March 2024 Court of Appeal handed down its decision in *Ullah v Secretary of State for the Home Department* [2024] EWCA Civ 201. Lord Justice Green, with whom the other members of the Court agreed, sets out a summary of the law in relation to an error of law assessment at [26] in the following terms:
 26. Sections 11 and 12 TCEA 2007 Act restricts the UT's jurisdiction to errors of law. It is settled that:
 - (i) the FTT is a specialist fact-finding tribunal. The UT should not rush to find an error of law simply because it might have reached a different conclusion on the facts or expressed themselves differently: see *AH (Sudan) v Secretary of State for the Home Department* [2007] UKHL 49 [2008] 1 AC 678 at paragraph [30];
 - (ii) where a relevant point was not expressly mentioned by the FTT, the UT should be slow to infer that it had not been taken into account: e.g. *MA (Somalia) v Secretary of State for the Home Department* [2010] UKSC 49 at paragraph [45];

(iii) when it comes to the reasons given by the FTT, the UT should exercise judicial restraint and not assume that the FTT misdirected itself just because not every step in its reasoning was fully set out: see *R (Jones) v First Tier Tribunal and Criminal Injuries Compensation Authority* [\[2013\] UKSC 19](#) at paragraph [25];

(iv) the issues for decision and the basis upon which the FTT reaches its decision on those issues may be set out directly or by inference: see *UT (Sri Lanka) v The Secretary of State for the Home Department* [\[2019\] EWCA Civ 1095](#) at paragraph [27];

(v) judges sitting in the FTT are to be taken to be aware of the relevant authorities and to be seeking to apply them. There is no need for them to be referred to specifically, unless it was clear from their language that they had failed to do so: see *AA (Nigeria) v Secretary of State for the Home Department* [\[2020\] EWCA Civ 1296](#) at paragraph [34];

(vi) it is of the nature of assessment that different tribunals, without illegality or irrationality, may reach different conclusions on the same case. The mere fact that one tribunal has reached what might appear to be an unusually generous view of the facts does not mean that it has made an error of law: see *MM (Lebanon) v Secretary of State for the Home Department* [\[2017\] UKSC 10](#) at paragraph [107].

12. Ms Barden relied on the grounds of appeal and skeleton argument.

13. The appellant's first ground alleges unfairness. It asserts, inter alia, the Judge went further than his "merely supervisory" role and entered into the arena, specifically referring to a passage of the determination in which the Judge discusses the position of the appellant's son in the USA and whether he was in contact with the family. The Judge concluded that he considered the evidence given at the hearing in relation to this issue to be "vague and unsatisfactory" which it is claimed is unfair as that issue was not raised by the ECO or in cross examination, that the adverse credibility findings resulting therefrom are mere speculation.

14. I find no merit in this ground. It is not clear why the Judge thought it necessary to pursue this tangent involving the question of whether the appellant's son was in contact or not, but that clearly was a point that was raised that the Judge decided to deal with. Even if the point was not dealt with by the ECO, as it may not have been raised in the application or considered relevant, and even if it was not a matter explored to the same extent by the Presenting Officer before the Judge, the Judge clearly raised this issue during the course of the hearing and engage with the sponsor who was able to answer questions to provide clarity.

15. This is not therefore a case in which a judge has made a decision based upon an issue of which the parties had no notice and had been denied the opportunity to properly comment upon or respond to. In such circumstances there will be a clear fairness issue, but in this appeal the Judge ensured the issue was raised during the course of the hearing and that the sponsor was able to reply to the questions asked. The Judge's conclusion the evidence on the point was "vague and unsatisfactory" is the Judge's assessment of what he was told.

16. It was submitted that if the matter could have been raised by the Judge the appellant was still denied the opportunity to call additional evidence to deal with the point further. If one looks at the determination it can be seen that the appellant was represented by counsel. There was no indication that counsel sought an adjournment to enable further evidence to be produced or raised any issue before the Judge in relation to this particular matter or how it had been approached.

17. I do not find it made out that the Judge descended into the arena or adopted an unacceptable inquisitorial role. Judges are entitled to ask questions if there is a matter they require clarification upon. It is not made out that the Judge's manner in terms of his approach, structure of questions, or ensuring sponsor had adequate time to answer, amounted to procedural irregularity sufficient to amount to a material error of law. That the appellant disagrees with the Judge's assessment on this point does not mean that the Judge speculated or denied the party a fair hearing.
18. The second ground asserts the Judge made findings not reasonably open to him. This is pleaded in the alternative if it is not accepted the Judge materially erred in law. The Judge's findings at [31] and [34] are criticised, but these paragraphs cannot be read in isolation. It is necessary to read the determination as a whole.
19. The Judge finds that the appellant cannot meet the requirements of E-ECDR.2.5 because "the appellant and sponsor can plainly afford to pay for carers". The grounds assert affordability of care was not the sole issue as there was the question of whether care can be reasonably provided, an assessment that was required in addition to that of whether the sponsor was able to pay for it.
20. The reason the Judge was not able to undertake the type of in-depth assessment which he is being criticised for not undertaking is because there was insufficient evidence provided in relation to the test set out in E-ECDR.2.5 to enable him to do so. There is reference to care being provided by two individuals and assistance from neighbours but a clear lack of any attempt to provide evidence regarding the availability of care, whether it met the appellant's needs, whether it was reasonable to expect her to make use of the same, etc. For example, I indicated to the parties at the hearing that I have judicial notice of the existence of care homes for the elderly in Lahore based on a previous decision yet there is no reference to such facilities in the evidence provided to the Judge. I set out examples of some of them at Annex A to this determination for information only.
21. These are issues that were raised in the refusal against which the appellant was appealing. The relevant parts of that document reading:

Eligibility relationship requirements

You do not meet the eligibility relationship requirement of paragraphs E-ECDR.2.1. to 2.5

In order to meet the requirements of E-ECDR.2.4. The applicant or, if the applicant and their partner are the sponsor's parents or grandparents, the applicant's partner, must as a result of age, illness or disability require long-term personal care to perform everyday tasks. You have stated on your sponsor's statement that you suffer from the following conditions; Depression, anxiety, heart problems and loss of memory.

You have provided letters from Sir Ganga Ram Hospital. These documents list the medical conditions you suffer from and goes on to list a number of medications that have been prescribed to you. Your medical documents you have submitted do not demonstrate that you require any form of care.

I therefore refuse your application under paragraph EC-DR.1.1(d) of Appendix FM of the Immigration Rules. (E-ECDR 2.4)

In order to meet the requirements of 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.

You have stated that you have had carers previously but you did not recognise them. I am therefore satisfied that if your daughter were to continue to send money to yourself there would be options of care available to you.

I note that your care and accommodation is currently funded by your sponsor and therefore I am satisfied that care is also affordable for you.

I therefore refuse your application under paragraph EC-DR.1.1(d) of Appendix FM of the Immigration Rules. (E-ECDR.2.5)

Eligibility Financial Requirement

You meet the eligibility financial requirement of paragraphs E-ECDR.3.1 . to 3.4.

Exceptional Circumstances

You have provided no information or evidence to establish that there are any exceptional circumstances in your case.

Based on the information you have provided we have decided that there are no such exceptional circumstances in your case.

Refusal under the Adult Dependent Relative Rules

In light of the above, your application is refused under paragraph E-ECDR.1.1 (d).

22. It is also important to note at [34] the Judge finds that whatever care the appellant may need is available and is affordable. On the limited evidence the appellant chose to provide to the Judge that is finding within the range of those reasonably open to the Judge.

23. The third issue raised is a criticism of the Judge for placing reliance on illegible medical evidence, claiming the Judge relied on a very limited part of the medical evidence and that not all of the other medical material was illegible. It is argued some of the medical documents could be read by a layperson and was therefore ignored.

24. I find this ground distorts the actual findings made by the Judge. The comment by the Judge, that the majority of the medical evidence is indecipherable to a layperson, is a finding within the range of those reasonably open to the Judge when that evidence is considered. Some of the evidence is not even in English or translated.

25. At [33] the Judge writes:

33. Drawing the above evidence together, the medical evidence is in large part of little assistance to the Appellant. I accept Dr Waheed's diagnosis of severe depressive illness and mild cognitive impairment. I accept there has been some historical cardiological investigation but the evidence does not set out what, if any, care needs arise from any such issues. I am satisfied that the Appellant is able to access the medication that she requires and that this is delivered to her by the pharmacy or by a neighbour. I do not accept that the evidence demonstrates that the Appellant requires long-term personal care to perform everyday tasks. Her health issues are not significant and the evidence does not establish that those issues, or her age (or other disability), cause a material impairment to the Appellant's ability to care for herself. She does not meet the requirements of para. ECDR.2.4.

26. The fact the Judge was able to identify the issues with which the appellant had been diagnosed by Dr Waheed, and historical cardiology investigations, shows the Judge did clearly consider that that he was able to take into account. The Judge notes the medication that the appellant is receiving is prescription medicine for depression and a statin. The Judge's comment that the evidence did not set out what, if any, care needs arise from such issues as a finding within the range of those reasonably open to the judge on the evidence. The Judge's assessment that the appellant's health needs are not significant and that the evidence did not establish that those issues or her age cause material impairment to the appellant's ability to care for herself, is a finding within the range of those open to the Judge on the basis of the evidence provided.
27. It was suggested during submissions that the Judge has erred in law by failing to set out which aspects of the evidence were legible, and which were not. Such a claim is without merit as noted in the guidance provided by the Court of Appeal there is no such obligation upon the Judge to have done so. I find it has not been shown the Judge did not consider the evidence with the required degree of anxious scrutiny.
28. Whilst the appellant and sponsor disagree with the outcome I do not find the Judge's conclusion that there was insufficient evidence to enable the appellant to succeed with her appeal is a finding outside the range of those available to the Judge in light of the limited evidence that was provided. The Judge's findings have not been shown to be rationally objectionable. On that basis I dismissed the appeal.
29. If the appellant decides to make a fresh application it is important that sufficient evidence is provided to establish that she is able to satisfy the relevant rules.

Notice of Decision

30. It has not been made out the First-tier Tribunal materially erred in law. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

8 March 2024

Annex A
Example of care homes for the elderly in Lahore, Pakistan

List of NGO's & Private Old Age Homes In Lahore

Name & Website	Postal Address
<u>Old Age Happy Homes</u>	Near Azmat Chowk, Green Town, Lahore Pakistan Cell: +92-321-4114322 Tel: +92-42-35124306
<u>United Human Rights Development Organization</u>	New Multan Colony, Al-Falah Market, Street 8, Multan, Pakistan-60650 +92300 6334431
<u>Senior Citizens Foundation of Pakistan Wah Chapter</u>	Address: 72-M, Phase 1, D.H.A. & Cantt. Chapter Lahore-54792 Pakistan Phone No: +92-42-5723533
<u>Darul Kafala (Old age home)</u>	Address: NEXET Pakistan, Lahore - Bedian Rd, Lahore 54000 Phone: 0302 7722991 Phone: 0302 7722991
<u>Bilquis Edhi Home(Township) Bilquis Edhi Foundation Welfare Centre</u>	Address: 302, Block B2, Phase C-II, Township, Lahore 54000 Phone # +924235156363
<u>Old Age Home NOYAN International Organization</u> http://www.freewebs.com/nanadaday/contectus.htm	Address: Address "HEAVEN" FOR SENIOR CITIZENS 237-C Pak Arab Society Ferozpur Road Lahore Pakistan. Phone # +92-3004275058 Phone # +92-3082177778
<u>Elderly Welfare Services Social Welfare Department</u>	Address: Social Welfare and Bait-ul-Maal Punjab- Secretary Office, M-Block Near International Market Model Town, Lahore, Pakistan Phone #(042) 99232178-9
<u>Heaven for Senior Citizens</u>	Address: 237-C Pak Arab Society Ferozpur Road Lahore, Pakistan Tel: 04235927333

Also:
Aafiat Old Age Home, Lahore
SEEK-NPO