IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2024-000707
UI-2024-000708
First-tier Tribunal No:
HU/59845/2022 HU/59846/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 15 August 2024

Before

UPPER TRIBUNAL JUDGE STEPHEN SMITH

Between

(1) Shoukat Ali
(2) Rehana Shoukat
(NO ANONYMITY DIRECTION MADE)

Appellants

and

Entry Clearance Officer

Respondent

Representation:

For the Appellant: Mr C. Holmes, Counsel instructed by Vista Legal Services
For the Respondent: Ms S. Simbi, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 14 June 2024

DECISION AND REASONS

1. The appellants in these proceedings are husband and wife, and were born in 1952 and 1955 respectively. They are citizens of Pakistan, where they live together. They live alone as a couple, but are assisted from time to time by visits from their adult children who reside in the United Kingdom. They have daily assistance from a maid, who attends most days from 9am until 12pm or 1pm. Friends of the family in the region also provide them with assistance.

The decisions under challenge

2. On 21 April 2021, the appellants applied for entry clearance under what were then the adult dependent relative provisions of Appendix FM of the Immigration Rules (Part E-ECDR). Their applications were refused by parallel decisions of the Entry Clearance Officer dated 28 November 2022. The Entry Clearance Officer did not accept that either appellant required, "as a result of age, illness or disability… long-term personal care to perform everyday tasks", nor that they would be unable, even with the practical and financial help of their sponsor (namely their

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son and other children residing in the United Kingdom) to obtain the required level of support in Pakistan. The maintenance requirements were not met, and there were no exceptional circumstances such that it would be unjustifiably harsh to refuse the applications.

3. The appellants appealed against the refusal of their human rights claims under section 82(1) of the Nationality, Immigration and Asylum Act 2002. The appeals were linked and were heard by First-tier Tribunal Judge Parkes ("the judge") sitting at Nottingham on 11 January 2024. By a decision promulgated on 16 January 2024, the judge dismissed the appeals. The appellants now appeal to the Upper Tribunal with the permission of First-tier Tribunal Judge Dainty.

Issues on appeal to the Upper Tribunal

4. There are four grounds of appeal.

   a. First, the judge failed to address the witness evidence. The appellants' four adult children attended the hearing before the judge and adopted a joint statement which outlined in considerable detail the care needs of their parents were said to have, and the reasons adequate care would not be available for them in Pakistan. The judge made no reference to the contents of that statement, despite there being no challenge to the witnesses' evidence by the Secretary of State at the hearing.

   b. Secondly, the judge failed to address certain features of the joint statement, including passages pertaining to the care needs of the first appellant (such as his need for support in practical tasks, and the particular difficulties arising from the communication challenges he experiences an account of his conditions). The first appellant has profound communication difficulties which render communication with persons other than his family, who have learned to communicate with him, incredibly challenging. The judge did not address that aspect of the evidence.

   c. Thirdly, the judge failed to address the emotional needs of the appellants. As held in *BRITCITS v The Secretary of State for the Home Department* [2017] EWCA Civ 368 at paras 59 and 76, the relevant immigration rules are capable, in principle, of embracing the psychological and emotional needs of elderly parents.

   d. Fourthly, in light of the above errors, the judge failed to give adequate reasons for his findings.

Factual background

5. The appellants' case before the First-tier Tribunal was as follows. The first appellant is deaf and mute, and has been since birth. He has a number of health and mobility conditions which mean that he is unable to walk unaided, and has been reliant on the second appellant, his wife for his care. Unfortunately, his health has been deteriorating at pace since 2019, following a fall which resulted in him needing an operation to his skull. The procedure left him weak, and he has to endure pain in his lower back and legs. He cannot walk unaided, needs the assistance of the stick or another person.

6. The second appellant also lives with a number of health conditions. She is recovering from gallbladder surgery, has been diagnosed with morbid obesity, and is said to be generally weak due to her age. She experiences back pain, high

blood pressure, joint pain and has difficulty breathing. She also experiences anxiety, and has had falls of her own in the past. She provides what care that she can to the first appellant, but following the deterioration of his health, his needs have become more challenging and she is now unable to meet them.

7. The appellants' four adult children now all live in the United Kingdom. While they visit their parents when they can, they consider that that does not enable them to be sufficiently responsive to the care needs that their parents have. The distance between the children and their parents as such as to make providing effective care very difficult. The appellants are also emotionally dependent on their children.

8. All four children attended the hearing before the judge. The grounds of appeal stated that there was no challenge to their evidence, which primarily took the form of a detailed written witness statement running to 14 pages, which they have jointly signed. Pausing here, while such joint witness statements are generally uncommon, neither party has criticised the judge's approach to it, and nor will I. Judges of the First-tier Tribunal enjoy the ability to regulate the procedure before them in accordance with the overriding objective, and on this occasion there was plainly no need for each adult child to give what would inevitably have been identical separate statements.

9. The essential conclusions reached by the judge may be found at paragraphs 27 and 28:

> "27. As it stands the evidence does not show that either of the Appellants are in need of long-term personal care to perform daily tasks. In addition the evidence does not show that, even if such care is needed, that it is not available or affordable in Pakistan. It is foreseeable that the time will come when they do need such care, the medical evidence says as much, but to meet the rules that has to be shown now rather indicated as an event at some point in the future, however near or far off that may be.
>
> 28. Put shortly the evidence does not show that the Appellants meet the rules for admission to the UK as adult dependent relatives and that with the support of their sons, friends and neighbours, their current needs are being met. Concern has been raised in the evidence that asking others for support cannot continue and they fear that the time may come when that may be refused. The evidence is that support comes from a number of different sources and it has not been shown that such support has been or will be withdrawn or cannot otherwise continue."

10. The judge dismissed the appeal.

Relevant legal principles

11. The appeal before the First-tier Tribunal was brought on the ground that the refusal of admission to the United Kingdom would be unlawful under section 6 of the Human Rights Act 1998.

12. It appears to have been common ground that "family life" for the purposes of Article 8 of the European Convention on human rights ("the ECHR") was engaged between the appellants and their adult children in the United Kingdom. The issue for the judge's consideration was the proportionality for the purposes of Article 8(2) ECHR of the appellants' continued exclusion from the United Kingdom by

virtue of the refusal of their human rights claims. That issue was to be assessed through the lens of the Immigration Rules in the first instance, then by reference to whether there were any exceptional circumstances such that it would be unjustifiably harsh to maintain the appellants' continued exclusion outside the rules.

13. The relevant Immigration Rules at the date of the Entry Clearance Officer's decisions were contained in Appendix FM, at Part E-ECDR. The core provisions were:

> "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.
>
> 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. Paragraphs E-ECDDR.3.1. and 3.2. provide that adequate maintenance must be possible without recourse to public funds, supported by an undertaking to that effect from an applicant's sponsor.

15. I will refer the above rules as the "ADR" rules, and to para. E-ECDR.2.4. as "the first limb".

16. The judge reached findings of fact that paragraphs E-ECDR.2.4. and 2.5. were not met. There are a number of authorities addressing the approach that an appellate court or tribunal should take to such findings of fact.

17. In *Perry v Raleys Solicitors* [2019] UKSC 5 at para. 52, Lady Hale PSC held that the constraints to which appellate judges are subject in relation to reviewing first instance judges' findings of fact may be summarised as:

> "…requiring a conclusion either that there was no evidence to support a challenged finding of fact, or that the trial judge's finding was one that no reasonable judge could have reached."

18. As to the approach of an appellate court or tribunal to findings of fact, *Volpi v Volpi* [2022] EWCA Civ 464 summarised the applicable principles in the following terms:

> "i) An appeal court should not interfere with the trial judge's conclusions on primary facts unless it is satisfied that he was plainly wrong.
>
> ii) The adverb "plainly" does not refer to the degree of confidence felt by the appeal court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appeal court considers that it would have

> reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached.
>
> iii) An appeal court is bound, unless there is compelling reason to the contrary, to assume that the trial judge has taken the whole of the evidence into his consideration. The mere fact that a judge does not mention a specific piece of evidence does not mean that he overlooked it.
>
> iv) The validity of the findings of fact made by a trial judge is not aptly tested by considering whether the judgment presents a balanced account of the evidence. The trial judge must of course consider all the material evidence (although it need not all be discussed in his judgment). The weight which he gives to it is however pre-eminently a matter for him.
>
> v) An appeal court can therefore set aside a judgment on the basis that the judge failed to give the evidence a balanced consideration only if the judge's conclusion was rationally insupportable.
>
> vi) Reasons for judgment will always be capable of having been better expressed. An appeal court should not subject a judgment to narrow textual analysis. Nor should it be picked over or construed as though it was a piece of legislation or a contract."

Ground 1: no failure to address the witnesses' evidence

19. This ground is without merit, for the following reasons.

20. First, pursuant to *Volpi* at para. 2(iii), the mere fact that a judge did not mention a piece of evidence does not mean that he overlooked it. The judge was sitting as a specialist judge of an expert tribunal and should not readily be inferred to have omitted to consider something. See also *HA (Iraq) v Secretary of State for the Home Department* [2022] UKSC 22 at para. 22(ii):

> "Where a relevant point is not expressly mentioned by the tribunal, the court should be slow to infer that it has not been taken into account - see *MA (Somalia) v Secretary of State for the Home Department* [2010] UKSC 49; [2011] 2 All ER 65 at para 45 per Sir John Dyson."

21. Secondly, the judge *did* refer to the witnesses' evidence in any event. See paras 8 ("the appellants' health issues are set out in full in the Tribunal papers…"); 9 (referring to the joint witness statement); 10 (referring to, and summarising, the joint witness statement); 9 (concerning the sponsor, Ansar Ali, and his brothers attending the hearing, and giving evidence); 10 (concerning the contents of the joint witness statement); 11 (concerning the passages in the joint witness statement pertaining to the appellants' maid, addressing the practical arrangements currently adopted in Pakistan); 21 (concerning the sponsor's oral evidence); 25 (concerning the Pakistani cultural imperative to look after the elderly, which was outlined at para. 70 of the joint witness statement). The judge plainly had the written and oral evidence of the witnesses firmly in mind at all stages in his decision.

22. Thirdly, in many applications under the ADR rules, the evidence required to make a successful application, or appeal successfully against the refusal of a human rights claim, is likely to be expert evidence. That is inherent to the nature

of the requirement imposed by para. E-ECDR.2.4., since the core requirement is that "as a result of age, illness or disability, the applicant requires *long-term personal care*." The term "long-term personal" care refers to a form of medical care or other similar provision, and necessarily will require medical evidence to be established.

23. There is a copy of the Secretary of State's *Family Policy, Adult dependent relatives, version 5.0*, dated 7 August 2023 in the Upper Tribunal bundle. Although it post-dates the decisions in the present matter and relates to applications under the replacement rules, Appendix ADR, the substantive criteria are identical for present purposes. Page 16 states that medical evidence would be required to establish the core criterion outlined above. While the guidance is not binding on judges, it is instructive in the present context, and is consistent with an ordinary reading of the first limb of the ADR Rules.

24. Accordingly, the extent to which the evidence of the appellants' adult children will relevant to this limb of the ADR rules will be limited. That necessarily means that the extent to which the judge would have needed to refer to the evidence of the appellants' adult children will also have been limited, notwithstanding the repeated references at all stages of his analysis. The requirement in paragraph E-ECDR.2.4. primarily required objective medical evidence to be established, rather than the subjective lay opinion of the appellants' children.

25. For these reasons, ground 1 is without merit. The judge referred repeatedly to the very evidence which ground 1 contends he omitted to consider. To the extent Mr Holmes contends that the judge failed adequately to assess this evidence, not only is this a disagreement of weight, but it is a submission which overlooks the specialist nature of the evidence required in order to establish a successful claim under the rules in question.

Ground 2: no failure to regard material matters

26. This ground is, properly understood, a different facet of ground 1. The evidence which it is said judge failed to have regard to went to issues on which expert medical evidence would ordinarily be required in order to establish that the requirements of the ADR rules are met.

27. Turning briefly to the specific criticisms advanced under this ground, para. 6 of the joint witness statement explains that the first appellant can only walk when aided by stick, or assisted by someone to walk. In isolation, this establishes little. Since the extract quoted establishes that the appellant *is* able to walk with a stick, it is difficult to see how the judge fell into error by not ascribing any significance to it. This facet of ground 2 throws into sharp relief the need for proper medical evidence to support a claim of this nature, rather than the subjective (if entirely understandable) evidence of non-medically qualified family members.

28. Para. 8 of the joint witness statement says that the first appellant needs aid when walking to the bathroom. Since para. 6 of the same statement accepted that he was able to walk with a stick, it is difficult to see how this extract from the joint statement took matters any further. The paragraph continued by stating that the first appellant has a seat for bathing himself and is able to do so without assistance. Similarly, the second appellant, the statement confirms, is also able to bathe herself. Again, even taken at its highest, this extract does not get remotely close to establishing the first limb of the ADR rules.

29. Para. 12 of the joint statement outlines the first appellant's communication needs. He plainly has profound communication needs, and the second appellant, perhaps better than anybody else, has developed ways to communicate with him and understand communication he is seeking to convey. But this does not establish how the first limb of the ADR rules is met. The second appellant lives with the first appellant and is able to understand and communicate with him. It is not clear how the lifelong communication and hearing difficulties the first appellant has always experienced can now, in isolation, be said to meet the first limb of the ADR rules, on the basis of this evidence. Again, this underlines the need for medical evidence from an appropriately qualified expert. While Dr Latif's report, as outlined below, states that the second appellant's health may deteriorate in the future, that does not demonstrate that the judge erred by reference to the position pertaining at the date of the hearing, on the basis of the evidence that was before him.

30. This ground is without merit.

Ground 3: no failure to address the appellants' emotional needs

31. This ground is based on extracts from *BRITCITS* per Sir Terence Etherton MR. The Court of Appeal dismissed a challenge to the ADR rules as then in force, and in doing so made the following observations about the flexibility of the rules and their scope. The first extract is at para. 59:

> "[The ADR rules] are capable of embracing emotional and psychological requirements verified by expert medical evidence. What is reasonable is, of course, to be objectively assessed."

32. The second is at para. 76:

> "Contrary to the submission of the appellant, those considerations are capable, with appropriate evidence, of embracing the psychological and emotional needs of elderly parents."

33. It is important to note that in the case of each quote, the need for appropriate evidence is central to the ability of an ADR applicant to succeed an emotional or psychological grounds.

34. In this respect, there was a report from Dr Latif dated 1 December 2023 before the judge. It primarily addresses the needs of the second appellant. It does not have page numbers or paragraphs, so I will have to cite unreferenced extracts from it.

35. The report commences by setting out the account the second appellant had provided to Dr Latif, namely that she is emotionally dependent on her children in United Kingdom, and other matters. Dr Latif had been referred to a number of the second appellant's medical records, none of which addressed her emotional or psychological needs. Under the heading "mental state examination", Dr Latif stated that the second appellant presented as being poorly orientated in time but good in relation to place and person. She did not present with any delusions or paranoia, or formal thought disorder. There was no evidence of any perceptual abnormalities. As for her mental health presentation, Dr Latif stated that she was presenting with symptoms of anxiety, which augment when she is unable to contact her children. She presented with mild dementia and, stated the report, "she will require family support well treated for this condition, as it will

deteriorate with time due to its progressive nature." The report outlined the prospective cognitive decline of the second appellant, and recommended that she should be treated by an appropriate expert with knowledge of anxiety, adding that she could be managed through medication and through lifestyle adaptation. Looking ahead, Dr Latif said that the second appellant would, in time, be unable to look after the first appellant.

36. It is clear that the judge had considered the report of Dr Latif at some length. Para. 26 he said:

> "The tenor of the medical reports is that the Appellants do have care needs, what these amount to has not been stated. The psychiatric report refers to the Second Appellant's condition and that it 'will' deteriorate, the rate of which is not clear. At present the Appellants are receiving care and although there are occasional issues, such as the First Appellant's deafness preventing him from hearing the Second Appellant if she falls."

37. In my judgment, the judge adequately considered the report of Dr Latif. He did not fall into error on account of his treatment of it. As the judge noted at para. 26, the report said that there were care needs that both appellants did have, but did not address in terms what they were. It was precisely that rather muted conclusion, at para. 26, that led to the judge's overall conclusion, at para 27 and 28 (quoted above) that the evidence did not demonstrate that either of the appellants were in need of long-term personal care to perform daily tasks.

38. Returning to this ground as pleaded, in order for the appellants to have succeeded on the basis that they needed the long-term emotional support of their children, consistent with *BRITCITS* they would have required appropriate medical or expert evidence. There was some medical evidence before the judge, but for the reasons he explained, it did not support that conclusion. In my judgment, the judge was entitled to approach the medical evidence in that way, for the reasons he gave.

39. For those reasons, the judge did not err in relation to his treatment of the appellants' emotional needs. It is difficult to see how the evidence before him, even taken at its legitimate highest, could have merited the conclusion which the appellants now contend that the judge erred by not reaching.

Ground 4: no failure to give sufficient reasons

40. This ground does not add anything to grounds 1 to 3, and is entirely parasitic upon them. Since I have dismissed those grounds, it is without merit.

Conclusion

41. This appeal is dismissed.

<u>Notice of Decision</u>

This appeal is dismissed.

The decision of Judge Parkes did not involve the making of an error of law such that it must be set aside.

Stephen H Smith

Judge of the Upper Tribunal
Immigration and Asylum Chamber

10 August 2024