

**Upper Tribunal
(Immigration and
Asylum Chamber)**



Appeal Number:

OA/02631/2013

THE IMMIGRATION ACTS

Heard at Field House

Determination

On 24 June 2014

Promulgated

On 25 July 2014

**Before
DEPUTY JUDGE DRABU CBE**

**Between
MRS FIAZ BEGUM**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

ANONYMITY DIRECTION NOT MADE

DETERMINATION AND REASONS

Representation:

For the appellant: Mr Z Nasim of Counsel instructed by Eden Solicitors

For the Respondent: Mr I Jarvis, Senior Presenting Officer

1. The appellant is a national of Pakistan. She was born on 1 January 1940. She was refused entry clearance to come to the UK as an elderly dependant parent. Her appeal against the decision brought under Section 82 of the nationality, Immigration and Asylum Act 2002 was heard by Judge M A Khan at Hatton Cross on 3 February 2014. In his determination promulgated on 13 February, the Judge gave his reasons for dismissing the appeal. The Judge upon analysing the oral and documentary evidence produced before him concluded that she did not qualify under the Immigration Rules - requirements of paragraphs EC-DR.1.1(d) E- ECDR 2.4 (E.ECDR 2.5) and E-ECDR 3.1) Appendix FM of the Rules. The Judge also considered the claim under Article 8 of the ECHR and came to a conclusion adverse to the appellant.
2. The appellant sought and was granted permission to appeal to the Upper Tribunal by Judge Brunnen , a Judge of the First-tier Tribunal on 7 May 2014.

3. In his decision to grant permission Judge Brunnen said, “The grounds on which permission to appeal is sought submit that the judge erred in law in that he misunderstood the chronology relating to the preparation of the medical evidence; made no adequate findings as to whether and to what extent the Appellant needed long – term personal care to perform everyday tasks; gave no adequate reasons for finding that the appellant’s daughter was not willing to care for her; gave no adequate reasons for finding the evidence of the Appellant’s witnesses to be exaggerated and inconsistent; and failed to analyse the Appellant’s Article 8 claim. These grounds are arguable” Judge Brunnen also went on to say,” It may also be pointed out that the Determination makes no mention of the evidential requirements in Appendix FM – SE paragraphs 34 and 35 relating to the nature of evidence required to satisfy Appendix FM E-ECDR 2.4 and E-ECDR 2.5.”
4. At the hearing I heard arguments from Mr Nasim for the appellant and Mr Jarvis for the respondent. Mr Nasim argued that Judge Khan had considered the medical evidence under a misapprehension. He had also failed to give reasons for adverse credibility findings and lastly he had not engaged with the appellant’s claim under Article 8. He asked that the determination be set aside as being in material error of law.
5. Mr Jarvis argued that the date of the medical report is not material or even relevant. The contents of the report do not suggest that the appellant cannot function without assistance. He pointed out that Judge Khan had found as a fact that the sponsor in this case could not maintain the appellant and that finding had not been challenged in the grounds seeking permission and nor had permission been granted which could somehow allow the appellant at this late stage to argue that the finding of Judge Khan was factually unfounded or that it was in material error of law. Mr Jarvis relied on the judgement in A A O [2011] EWCA Civ 840 and drew my particular attention to paragraph 49 thereof. Mr Nasim had nothing further to say.
6. I have looked at the determination of Judge Khan with care. I have exercised the same care in considering the assertions made in the grounds advanced to seek permission to appeal. In Paragraph 42 of the determination, Judge Khan states, “The sponsor was regularly overdrawn six months prior to the application. It may well be the case that he has been spending money on himself and that he has a regular income, he has to be able to demonstrate that he has the

funds to support an elderly grandmother without recourse to public funds. With the states (sic) of affairs with regard to his overdrawn bank account, I find that the sponsor is not in a position, willing and able to maintain and accommodate the appellant without recourse to public funds.”

7. In respect of the grounds seeking permission to appeal I note that the grounds are quite lengthy in that they are spread over three pages of typewritten material. Nowhere in these grounds is there a challenge to the finding made by Judge Khan regarding the sponsor’s ability and willingness to maintain the appellant without recourse to public funds. This absence of challenge is fatal to this appeal as, whatever be the merits of the grounds upon which permission has been granted, I cannot be satisfied that the decision of Judge Khan was in material error of law.
8. In the circumstances I do not find a material error of law in the determination of Judge Khan and hence his decision dismissing the appellant’s appeal must stand.

ANONYMITY DIRECTION

None has been sought and circumstances of the case do not warrant such direction.

Judge Drabu

Judge of the First Tier Tribunal sitting as Deputy Judge of the Upper Tribunal.

22 July 2014

