



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/29054/2014

THE IMMIGRATION ACTS

Heard at Bennett House, Stoke
On 17th February 2015

Decision & Reasons Promulgated
On 31st March 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE GARRATT

Between

NORMA PEARL MCGIBBON
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Pipe of Counsel instructed by French and Co Solicitors
For the Respondent: Mr A McVeety, Senior Home Office Presenting Officer

DECISION AND REASONS

1. Before the Upper Tribunal the Secretary of State becomes the appellant. However, for the sake of consistency and to avoid confusion, I shall continue to refer to the parties as they were before the First-tier Tribunal.

2. On 24th November 2014 Judge of the First-tier Tribunal Parkes gave permission to the respondent to appeal against the decision of Judge of the First-tier Tribunal P J M Hollingworth in which he allowed the appeal on human rights grounds against the decision of the respondent to refuse leave to remain applying the provisions of Appendix FM and paragraph 276ADE of the Immigration Rules and on Article 8 grounds generally.
3. In granting permission Judge Parkes noted that the grounds argued that Judge Hollingworth erred in relation to the needs of the appellant's mother, said to be cared for by the appellant, because there was no evidence that alternative care packages had been explored including the actual needs of the appellant's mother and her entitlement to receive assistance. This had to be balanced against the fact that the appellant was in the United Kingdom illegally and the fact that the appellant's mother did not wish to live in a care home did not make the respondent's decision unreasonable.
4. At the hearing before me I heard submissions from both representatives about the alleged error and then reserved my decision. A summary of the submissions and my conclusions are set out below.

Submissions

5. Mr McVeety confirmed that the respondent relied upon the grounds. He emphasised the respondent's view that the appellant had been given the advantage of overstaying. Full consideration had not been given to possible caring arrangements which might be available through the state and otherwise if the appellant had to return to Jamaica. He thought that the judge's conclusions in paragraph 30 of the decision were wrong because the nature of a social care package had not been investigated and this was relevant to the decision on proportionality. He also drew my attention to paragraph 34 in which the judge had decided that the appellant's removal would have a significantly detrimental effect on the wellbeing of the appellant's mother. He considered this conclusion to be wrong in all the circumstances of the case.
6. Mr Pipe drew my attention to his skeleton argument which, amongst other things, quotes the decision of the Court of Appeal in *AT (Guinea)* [2006] EWCA Civ 1889 which made the elementary point that the duty to give reasons does not entail a requirement that the fact-finding judge should deal expressly with every matter raised. Nevertheless, he argued that the judge had dealt with the issue of care satisfactorily. In considering the provisions of Sections 117A and 117B of the Nationality, Immigration and Asylum Act 2002 (as amended) the judge had given proper consideration and weight to not only the relationship between the appellant and her mother but also her relationship with her partner. Although the latter relationship could not entitle the appellant to status under the Immigration Rules it was, nevertheless, a relevant factor. He also reminded me that the judge had taken into consideration medical evidence about the extent of care provided by the appellant for her mother.
7. Mr McVeety concluded his submissions by expressing the view that there was nothing in front of the judge about the availability of care arrangements which had only been speculated upon by the judge.

8. In conclusion Mr Pipe conceded that state care might be provided to the appellant's mother but the Home Office had to show that interference with the Article 8 rights of all the parties was justified. The removal of the appellant would clearly be detrimental to the mother's state of health.

Conclusions

9. The issue of potential care arrangements had been raised by the respondent when examining the existence or otherwise of exceptional circumstances in the application made by the appellant. The point made is that the appellant's mother, a British citizen, could seek support from local Social Services as required and, if that were not available, from her family members not subject to immigration control. This is the issue which the respondent claims was inadequately examined by the judge.
10. The decision by the experienced judge is comprehensive and cogently reasoned. It is difficult to see how the decision can be seen as deficient in its examination of all the issues relevant to the human rights claim and particularly the matter raised by the respondent namely the availability of state assistance and/or care through other family members. The judge was evidently aware of the assistance given by the appellant's niece in addition to the appellant but was entitled to conclude that the niece's assistance was limited. He had medical evidence before him in the form of a letter from Dr Bell which assisted him to conclude that the care given by the appellant to her mother was of significant importance to make her the main carer. He was further entitled to conclude that the appellant's mother was completely dependent upon her daughter. Thus the issue of alternative care arrangements within the family were properly covered in the decision.
11. Whilst the judge acknowledges that a state care package might be available he has looked, as he was entitled to do, at the reality of the situation and the difficult circumstances of the mother's failing health. In considering that he also looked at the personal circumstances for the appellant taking into consideration that she had no immigration status in the country. He noted that, nevertheless, the appellant was an English speaker who is financially independent and was in a genuine and subsisting relationship with her partner, a British citizen. All of these factors entitled the judge to conclude the proportionality balancing exercise in the appellant's favour. His conclusions, particularly in relation to the availability of care, cannot be seen as pure speculation when they have been reached on the basis of the reality of the medical situation for the mother and the clear emotional dependency between the mother and the appellant. I do not see that an error arises in this respect.
12. The approach of the judge to consideration of Article 8 issues is also without error. Although the judge reached the conclusion that the two stage approach recommended in *Gulshan* ought to be followed when it is now clear from subsequent decisions of the Court of Appeal that any intermediary test is unnecessary, this does not affect the judge's plainly thorough consideration of Article 8 outside the Immigration Rules. He correctly applied the five stage approach recommended in *Razgar* [2004] UKHL 27 and gave full attention to the application of Sections 117A and 117B of the 2002 Act in relation to the public interest involved.

13. I have, therefore, reached the conclusion that the respondent's criticisms of the decision amount to no more than a disagreement with the judge's findings which have been properly and cogently reasoned in respect of all relevant issues.

Notice of Decision

The decision of the First-tier Tribunal does not show a material error on a point of law and shall stand.

Anonymity

No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Garratt