



Upper Tribunal  
(Immigration and Asylum Chamber)

Appeal Number: HU/00965/2018

**THE IMMIGRATION ACTS**

Heard at Field House  
On 1<sup>st</sup> November 2018

Decision & Reasons Promulgated  
On 9<sup>th</sup> November 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE FROOM

Between

GULAM ZAKARIA CHOWDHRY  
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

**Representation:**

For the Appellant: Mr S Uddin, Solicitor

For the Respondent: Mr T Melvin, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. The appellant appeals with the permission of the First-tier Tribunal against a decision of Judge of the First-tier Tribunal E M M Smith dismissing his appeal against a decision of the respondent, dated 4 December 2017, to refuse his application for leave to remain on human rights grounds.
2. The appellant is a national of Bangladesh. He arrived in the UK in July 2011, entering lawfully as a visitor. He was granted further leave on an exceptional basis until September 2012. The appellant sought further leave on the ground that removing

him would breach his rights under article 8 of the Human Rights Convention and also that he had a derivative right of residence under the EEA Regulations. His appeals came to an end when the appellant withdrew his appeal. On 26 January 2016 the appellant made the current application.

3. The application was supported by a report from Ms Christine Brown, an independent social worker, who had met the appellant and his mother for two hours in December 2013. The appellant's mother, Mrs [Z] Choudhury<sup>1</sup> was born in 1948, married when she was seventeen and had seven children of whom the appellant is the eldest. She came to the UK with her husband and six of her children in 1987. The appellant, who was then 21, remained in Bangladesh and later married. Mrs Choudhury's husband died in 2005. She became isolated as her other children were busy with their respective families and her health deteriorated. She suffered renal failure and was started on dialysis. She had become very dependent on the appellant. A report by a consultant psychiatrist, Dr Hajioff, found Mrs Choudhury was depressed and anxious in June 2014. He found she was in need of close supervision. Ms Brown recommended that the appellant be permitted to remain to continue as his mother's carer. The report was dated 22 August 2014.
4. The notice of decision, dated 4 December 2017, set out reasons for refusing the appellant's application. Firstly, his application failed the Suitability requirements of the Immigration Rules because he had failed to pay NHS charges exceeding £500<sup>2</sup>. Secondly, the appellant did not meet the requirements of paragraph 276ADE(1)(vi) in any event because he had not shown there were very significant obstacles to his reintegration in Bangladesh. He was 44 years of age when he arrived in the UK and his wife and children reside there. Thirdly, there were no exceptional circumstances warranting a grant of leave outside the rules. The appellant had been granted leave exceptionally until 6 September 2012 in order to make permanent arrangements for his mother's care. He was advised at that time that further leave was unlikely to be granted. The appellant's mother was British and, whilst it was not disputed she had significant care needs, she could be cared for by means of other arrangements.
5. The appellant's solicitors filed grounds of appeal which made clear that the appellant was no longer pursuing his claim to have a derivative right of residence. Nor was it argued the appellant could meet the requirements of Appendix FM or paragraph 276ADE(1) of the rules. Instead, the grounds argued the appellant should have been granted leave outside the rules.

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<sup>1</sup> I have used this spelling, taken from not only Ms Brown's report but also the appellant's witness statement, rather than the alternative, Chowdhury, which appears in some other documents.

<sup>2</sup> 'S-LTR.4.1. The applicant may be refused on grounds of suitability if any of paragraphs S-LTR.4.2. to S-LTR.4.5. apply.

...

S-LTR.4.5. One or more relevant NHS bodies has notified the Secretary of State that the applicant has failed to pay charges in accordance with the relevant NHS regulations on charges to overseas visitors and the outstanding charges have a total value of at least £500.'

6. The appeal was heard by the First-tier Tribunal in Birmingham on 6 June 2018. The judge noted the age of the reports by Ms Brown and Dr Hajioff and the absence of up to date medical evidence. As of 2014 the appellant's mother was suffering from heart failure, kidney failure, high blood pressure and symptoms of depression. The judge noted the claim that the appellant's siblings are unable or unwilling to look after their mother and that, by default, it has fallen to the appellant to do so. The judge directed himself as to the correct test in the circumstances that the rules are not met<sup>3</sup> and noted the appellant had only made one phone call to the local council to enquire about the possibility of other care arrangements being made. The extent of Mrs Choudhury's care needs had not been made clear and the evidence did not show she required a live-in carer. He noted the appellant's other children had not given evidence to bear out the claim that Mrs Choudhury had been abandoned by them. The judge considered the impact of section 117B of the 2002 Act and the fact the appellant did not have leave. He concluded the appellant's removal would not result in unjustifiably harsh consequences for the appellant's mother and the decision was proportionate.
7. Permission to appeal was sought on the basis the judge had overlooked significant evidence such as a medical letter showing that the appellant's mother had reduced life expectancy and her last wish was to be with her son.
8. Permission was granted by the First-tier Tribunal because it was arguable the judge's assessment of the severity of the consequences of the appellant's removal had been incomplete. He had proceeded on the basis that there was no recent medical evidence before him so he had overlooked the letter, dated 23 May 2018, from Mrs Choudhury's treating consultant. The grant advised that any error found might prove immaterial in the light of the other findings made.
9. The respondent filed a rule 24 response opposing the appeal.
10. The letter which the appellant now relies on is dated 23 May 2018 and is addressed to the Home Office. The author is Dr Andrew Findlay, a consultant nephrologist at Luton and Dunstable Hospital. It states that Mrs Chowdhury (*sic*) has been one of his haemodialysis patients since 2011. She requires dialysis three times a week. She also has severe cardiac failure. Realistically, her condition means she would require a significant care package that the state would have to fund. Her son, the appellant, has been providing this since 2011 which has inevitably prevented recurrent hospital admissions. Mrs Chowdhury has "*inevitable reduced life expectancy given her co-morbidities and really her son providing the caring role (not a small undertaking at all) during her final years is limiting the burden on the NHS*". The letter requests that this information be taken into account.
11. I heard submissions from the representatives as to whether the decision of Judge Smith contains a material error of law. I shall set out only a brief summary.

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<sup>3</sup> *R (Agyarko) v SSHD* [2017] UKSC 11

12. Mr Uddin's submissions largely amounted to the re-argument of the merits of the appeal. In effect, he said the fact the appellant's mother was dying and her last wish was to be with her son must mean there were exceptional circumstances for article 8 purposes, justifying a positive decision outside the rules. The judge's oversight of Dr Findlay's letter was a material error.
13. Mr Melvin relied on his rule 24 response. There could be no material error because all the information in Dr Findlay's letter had been accepted by the judge.
14. I find there is no material error of law in Judge Smith's decision, which must stand. The circumstances of this case inevitably evoke compassion. However, my task is to decide dispassionately whether Judge Smith's decision was erroneous in law. The single argument raised is that, in coming to his conclusion that the decision was proportionate, he had overlooked the recent letter from Dr Findlay and, as such, he had not fully recognised the severity of the consequences of removing the appellant.
15. I accept Dr Findlay's letter was before the judge and that he does not refer to it expressly in his decision. I also accept that, in paragraph 33, the judge stated that there was an absence of contemporary evidence to establish, among other things, the state generally of Mrs Choudhury's health. At paragraph 25 he stated that there was no up to date medical report, although Dr Findlay's letter could not properly be described as a "report". In any event, it is relatively clear that the judge did not take the letter into account, despite the fact the appellant mentioned it in paragraph 11 of his witness statement.
16. However, even if this amounted to an error of law, it could not be said to have been material, by which I mean that it cannot be shown that, had the judge taken the letter into account, his decision might have been different. My reasons for reaching this conclusion are as follows.
17. The information contained in Dr Findlay's letter is that (1) Mrs Choudhury receives dialysis and has heart failure, (2) she requires significant care which the appellant has provided since 2011 and which the state would have to pay for in his absence, and, (3) that Mrs Choudhury has reduced life expectancy. In my judgment, all of these matters are adequately reflected in the findings of the judge.
18. At paragraph 25 the judge noted that Mrs Choudhury was shown to have been suffering from high blood pressure, episodes of heart failure, kidney failure and symptoms of depression in 2014. He continued, "[i]t is more probable than not that her health is no better now". In other words, he proceeded on the basis that Mrs Choudhury's condition was as described by Dr Findlay.
19. In the same paragraph the judge stated that "*there is common ground ... the appellant has in some form or another cared for his mother and his mother requires some form of care*". Dr Findlay's letter refers to a "significant care package" but does not say what exactly that would involve. Again, at paragraph 31 the judge noted that "*[i]t is an agreed fact that the mother's health requires significant input by someone to help her manage her day to day living*", although the extent of that was not clear. The judge was

doubtful regarding the appellant's claim that he had to be with his mother "throughout" and that he was a live-in carer. It was open to the judge to reject the claim for the reason given, namely that the appellant had only made one phone call to the council about alternative care arrangements notwithstanding the warning issued by the Home Office when granting him a short period of discretionary leave in 2012. Dr Findlay's letter shed no further light on either the extent of the care role assumed by the appellant or the enquiries made with social services.

20. It is implicit from the judge's concern that no realistic efforts had been made to make alternative arrangements that he recognised that the source of care in the absence of the appellant was likely to be the council and therefore that the burden would be borne by the public purse. In any event, it would not sit well with this appellant to have argued that he was saving the state from having to fund his mother's care in the circumstances that he had not paid his own substantial bill from the NHS<sup>4</sup>.
21. I do not consider that the final point made by Dr Findlay that Mrs Choudhury has reduced life expectancy requires further elaboration. As said, the judge was fully aware of the serious medical conditions which she suffered from. It is common knowledge, if not, common sense that kidney failure coupled with heart failure will reduce life expectancy.
22. The decision of the First-tier Tribunal dismissing the appellant's appeal is adequately reasoned and took full account of the relevant evidence. The judge reached a conclusion which it was open to him to reach on the facts. His decision must stand.

### **Notice of Decision**

The appellant's appeal is dismissed. The Judge of the First-tier Tribunal did not make a material error of law and his decision dismissing the appeal shall stand.

No anonymity direction is made.

Signed

Date 1 November 2018



**Deputy Upper Tribunal Judge Froom**

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<sup>4</sup> According to an email from Susan Pullen of the Royal Brompton & Harefield NHSFT, dated 4 December 2017, it had been decided not to pursue the appellant for the £4,839.90 bill for treatment which he had incurred in 2014 due to the costs involved.