



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/21234/2016

THE IMMIGRATION ACTS

Heard at Bradford
On 21 June 2018

Decision & Reasons Promulgated
On 22 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE SAFFER

Between

NASEEM AKHTAR
(NO ANONYMITY ORDER MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mrs Javed a Solicitor

For the Respondent: Mr Diwyncz a Home Office Presenting Officer

DECISION AND REASONS

Background

1. The Appellant was born on 16 April 1949. She applied for leave to remain due to her failing health. The Respondent refused the application on 24 August 2016. Her appeal against this was dismissed by First-tier Tribunal Judge Moxon (“the Judge”) following a hearing on 25 September 2017.

The grant of permission

2. Judge Parker granted permission to appeal (6 December 2017) as it is arguable that the Judge materially erred in;
 - (1) Rejecting the evidence of Dr Khan without adequate reasons,

- (2) Not identifying evidence to support the assertion that the Appellant's health had not deteriorated in the United Kingdom,
- (3) Not addressing or making findings on the evidence of her family members here concerning her care needs or her physical and mental health,
- (4) Not considering the evidence of family members when considering proportionality, and
- (5) Making a finding that there was no "real, committed and effective support" from adult relatives here which appeared to be at odds with the evidence.

The hearing

3. No rule 24 notice was issued. Mr Diwyncz stated that he would not resist the Appellant's submissions. Mrs Javed relied on the grant of permission.

Discussion

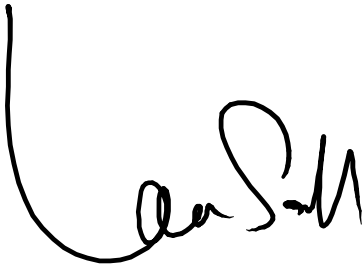
4. There is no merit in ground 1. The Judge was entitled to place little weight on the evidence of Dr Khan regarding the Appellant's ailments and care requirements for the reasons given [60], namely that Dr Khan strayed outside his/her field of expertise.
5. Ground 2 is made out. There was no evidential basis to support the finding of a lack of health deterioration [55/63].
6. Ground 3 is made out. The Judge set out what ailments the Appellant said she had [9], namely stress, depression, cholesterol, arthritis, visual impairment, abdominal pain, insomnia, osteoarthritis in her knee, problems with her lumbar spine, and vitamin D deficiency. He did not make findings as to whether he accepted she had these, apart from depression [53], other than to say there was nothing to "suggest that physically she is unable to tend to her self-care" [60], and she had not established she had the care needs asserted [65/74/81] or that they were significant [67]. He did not identify what her care needs were.
7. Ground 4 is made out. He did not consider the evidence of family members when considering proportionality other than to say they can retain contact by letter, telephone, and utilising modern technology, and visits [80]. He did not consider their article 8 rights.
8. Ground 5 is made out. Despite finding that there was no "real, committed and effective support" [74] from adult relatives here, the Judge made no actual finding as to what support they give.
9. Given these findings, I agree with the representatives that it is appropriate to remit the matter for a new hearing on the issues, as the errors go beyond those contained within the Presidential Guidance for retention in the Upper Tribunal.

Decision:

The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law.

I set aside the decision.

I remit the matter to the First-tier Tribunal for a new hearing, but not before Judge Moxon.

A handwritten signature in black ink, appearing to read 'Deputy Upper Tribunal Judge Saffer'. The signature is written in a cursive, flowing style.

Deputy Upper Tribunal Judge Saffer
21 June 2018