



IAC-FH-CK-V1

**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/19423/2019
(V)**

THE IMMIGRATION ACTS

**Heard remotely from Field House
On 5 May 2021**

**Decision & Reasons Promulgated
On 19 May 2021**

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

**MS NWE NI SAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Unrepresented, the Appellant and her daughter appearing in person

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

This is the appeal of Ms San against the decision of First-tier Tribunal Judge Buttar (“the judge”), promulgated on 23 November 2020, by which she dismissed Ms San’s appeal against the Respondent’s refusal of her human rights claim.

Ms San is a citizen of Myanmar, born in December 1951. She arrived in the United Kingdom in April 2019 as a visitor. In October 2019 she made her human rights claim on the basis that she required the support of her two adult daughters in this country and would not be able to live a reasonable life in Myanmar. She was a widow and had certain health conditions. The human rights claim was refused by the Respondent on 13 November 2019.

The decision of the First-tier Tribunal

Ms San was represented before the First-tier Tribunal.

Having summarised the nature of the claim and the evidence, the judge set out her findings in some detail between paragraphs 21 and 24. The core findings made were as follows:

Ms San's pre-existing medical conditions had not deteriorated since arriving in the United Kingdom, that those health conditions would not prevent Ms San from re-integrating back into Myanmar society, and that she would have access to medication in that country for those conditions;

that Ms San had been living with her daughter in Myanmar and could return to live with her on return to that country in a home owned by Ms San (or at least by the family);

that Ms San's two adult daughters in the United Kingdom would be able to financially support her in Myanmar and help to arrange for any day-to-day care that might be required, as well as paying for relevant medication;

Ms San would also have the support in Myanmar of her sister and her sister's children, all of whom reside in that country.

At paragraph 25 the judge concluded that the Appellant could not satisfy paragraph 276ADE(1)(vi) of the Immigration Rules as there were no very significant obstacles to re-integration into Myanmar society.

The judge went on to look at Article 8 outside the context of the Immigration Rules. At this point the judge's approach became somewhat confused. In paragraph 26 she appeared to find that there was family life between Ms San and her family members in the United Kingdom and that the Respondent's decision under appeal would interfere with that family life. However, at paragraph 27 the judge stated that Article 8 was "not engaged" because the ties between Ms San and her daughters in this country did not go beyond those expected between a parent and adult children.

However, at paragraph 28 the judge went on to conclude that even if there was family life in the United Kingdom, the Respondent's decision was nonetheless proportionate, having regard to the facts found, section 117B of the Nationality, Immigration and Asylum Act 2002, as amended, and relevant case-law including Agyarko [2017] UKSC 11. The appeal was accordingly dismissed.

The Appellant's challenge

The grounds of appeal are rather lengthy and difficult to follow in places. In essence, they seek to challenge the judge's assessment of Article 8(1) family life) and 8(2) (proportionality).

Permission to appeal was granted by First-tier Tribunal Judge Feeney on 30 December 2020.

The hearing

By the time of the hearing before me, Ms San was no longer represented. She joined the hearing by telephone, together with her daughter, Miss Yee. Following my full introduction I was satisfied that Miss Yee could understand and follow proceedings and that she was able to make relevant representations on the issues before me.

I heard from Mr Avery, who submitted that the judge's findings were open to her on the evidence.

At the end of the hearing I informed the parties that I would not give my decision immediately.

Conclusions

I conclude that there are no material errors of law in the judge's decision such that I should set it aside.

The judge carefully considered the evidence before her. The lack of relevant medical evidence entitled her to conclude that Ms San's health conditions were not significant and that she would, as she had in the past, be able to access relevant treatment in Myanmar.

The judge was entitled to disbelieve the Appellant's daughters' evidence relating to the circumstances in which their mother had resided in Myanmar in the years immediately preceding her arrival in the United Kingdom. It was open to the judge to find that Ms San had in fact lived with her youngest daughter in Myanmar and that they could reside together once again if Ms San were to return. The judge was entitled to find that Ms San would be able to receive support from her youngest daughter and/or her sister in Myanmar and/or her two daughters residing in the United Kingdom.

In terms of the Article 8 assessment, the judge was plainly entitled to find that paragraph 276ADE(1)(vi) could not be satisfied in light of the findings of fact.

On the wider proportionality exercise, there is on the face of it an error of approach in paragraphs 26 and 27. On the one hand, the judge appeared to

accept the existence of family life in the United Kingdom, whilst in the next paragraph she concludes that it did not. However, I am satisfied that any error here had no material bearing on the outcome of the proportionality exercise. At the very beginning of paragraph 28 the judge stated in terms that what followed was on an alternative basis to what preceded the further considerations (“Even if I am wrong about this ...”).

The judge took all relevant relationships into account, including those established in the United Kingdom with the two adult daughters, together with the relevant findings of fact set out previously in her decision. The judge was bound to and did take account of the mandatory considerations set out in section 117B of the 2002 Act. She placed weight on the fact that Ms San was unable to meet any of the relevant Immigration Rules, a factor that was clearly relevant. The ability to maintain communications with family members in the United Kingdom is taken into account at paragraph 32. Paragraph 33 correctly refers to the relatively high threshold to be met by an Article 8 claim which cannot succeed by virtue of any of the Immigration Rules.

Ultimately, and in when the decision is read as a whole, the conclusion that the Respondent’s decision was not disproportionate was one that was unarguably open to the judge.

It follows from this that Ms San’s appeal to the Upper Tribunal must be dismissed and the decision of the First-tier Tribunal shall stand.

Anonymity

The First-tier Tribunal did not make an anonymity direction and there is no reason why I should do so. I make no direction.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision of the First-tier Tribunal and that decision shall stand.

Signed H Norton-Taylor

Date: 7 May 2021

Upper Tribunal Judge Norton-Taylor