



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

Appeal Number: HU/21439/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 19 May 2017**

**Decision &
Promulgated
On 30 May 2017**

Reasons

Before

**DR H H STOREY
JUDGE OF THE UPPER TRIBUNAL**

Between

**MRS EISHAH AHMED MOHAMMED ASEM
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Khan, Counsel, instructed by Parkview Solicitors
For the Respondent: Mr P Armstrong, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a citizen of Yemen, applied for entry clearance as an adult dependent relative under para EC-DR1.1. of Appendix FM of the Immigration Rules on the basis that she was the sponsor's mother. In a decision dated 9 August 2016 the respondent refused her application

because she had not shown she was related as claimed. Her appeal came before First-tier Tribunal (FtT) Judge Robertson who in a decision sent on 25 January 2017 dismissed it.

2. Judge Robertson accepted that the appellant had established that she was related as claimed and also found that the appellant met the financial and accommodation requirements of the Rules. The judge also accepted that the medical evidence established that the appellant is severely disabled, that she requires “urgent and permanent personal care” and that the level of care she requires is not available in Yemen, both on the public and private levels. The judge dismissed the appeal nevertheless because she was not satisfied that the appellant/sponsor had given a credible account of how care was provided to the appellant and by whom between 2013, after she was discharged from hospital and mid-2016, when she was readmitted to hospital, particularly given that it was their account that the appellant and the lady with whom it was said she resided with lived in a garage and were both elderly and seriously ill (paras 27-28). The judge attached adverse weight to the fact that the appellant and sponsor provided no evidence from the people who were said to have cared for the appellant in Aden and the sponsor had not shown she had used best endeavours to trace her brothers in Yemen. The judge noted that despite making use of the Red Cross to try and trace her mother, father and brothers in 2008, she had made no efforts to trace her siblings since, concluding at 30 IV that “[i]n the absence of reliable evidence to the contrary, there is nothing to suggest that the Sponsor’s siblings (the sons of the Appellant) are not with her in the Yemen”. The judge concluded therefore that the appellant had not shown that there was no person in Yemen who could reasonably provide her with the personal care she requires in Yemen and so failed to meet the requirements set out in para E-ECDR.2.5.
3. The judge also found that the appellant failed to meet the conditions set out in E-ECDR.3.1 which include the requirements that the appellant must provide evidence that she will be adequately cared for in the UK without recourse to public funds. The judge made reference to the respondent’s guidance on the elderly dependent relative provisions in which it is stated at para 2.3.4(e) that when the sponsor proposes to provide personal care, planned care arrangements for the applicant must be provided, together with the costs of such care (para 30 VI). At para 30 VII the judge stated:

“The Appellant has significant care needs. Although the Sponsor has signed an undertaking that she will provide care for the Sponsor, in evidence it was clear that she herself had significant health difficulties. When it was put to her that she herself required help, and that therefore whether she was able to provide care to someone who has the health needs described in the medical evidence was in issue, she said that she was caring for her son so she could care for her mother. However, when describing the effects of refusal of her mother’s application on her and her mother, she also stated that she

(the Sponsor) had been bedridden for almost 12 months after the decision was issued and had to have additional care from social services for herself. The Sponsor also stated that there were other times when she was provided with care for herself and a nanny for her son when she could not care for him. She said that she had friends, some of whom ran charities, who had put together a rota to care for her when she was not able to care for herself and they had guaranteed that they would help her with her mother. However, there was no evidence from her friends, and this is evidence that could reasonably have been provided.”

The judge went on to consider whether the appellant could succeed outside the Rules on the basis of compelling or exceptional circumstances, concluding that the public interest outweighed the appellant’s Article 8 rights to respect for private and family life.

4. The grounds of appeal are lengthy and oddly ordered but in summary allege that the judge materially erred in the following respects:-
- (i) in failing to accept the sponsor’s written and oral evidence of her contact with the Saudi authorities;
 - (ii) in unreasonably inferring that simply because there might have been somebody who had tended to the appellant’s care that they are now necessarily able and willing to continue to provide the care;
 - (iii) in erroneously stating that in order to meet the care requirements of the Rules an applicant needed to establish “how care was provided and why it cannot now be provided”;
 - (iv) in finding that there was nothing to suggest the sponsor’s siblings are not with the appellant in Yemen - based, it was submitted, on pure speculation;
 - (v) in failing to have regard to the medical reports which made clear that the care the appellant has received in Yemen is insufficient, unstable and unsuccessful;
 - (vi) in misconstruing the respondent’s guidance at para 2.3.4(e), which does not require an applicant to provide planned care arrangements; and, finally,
 - (vii) in failing to carry out an adequate proportionality assessment - “[t]he judge bases her Article 8 assessment on the erroneous premise that the Immigration Rules have not been met”.

I am grateful to both parties for their helpful and targeted submissions.

5. It is not in dispute that the appellant is severely disabled. She has had three brain strokes. She suffers from Polycythemia Vera (PV), viral meningitis and other less severe conditions. She is completely immobile and utterly incapable of performing everyday self-care.
6. As much as the appellant's circumstances have my sympathy, I am not persuaded that the judge materially erred in law.
7. In relation to (i), I accept that the judge may have fallen into error in assessing whether it was the sponsor who contacted the Saudi authorities. It was incorrect of the judge to state that there was "absolutely no evidence before me, other than the [sponsor's] oral evidence" that she had done the contacting. The sponsor had also stated this in her witness statement and the ECO had recorded the sponsor as contacting the MOD in Saudi Arabia on "whether they could evacuate her mother from Yemen". Nevertheless, although the judge described this consideration as adverse to the sponsor's credibility, I fail to see that it had a material bearing on the judge's reasons for not accepting the evidence regarding whether or not the appellant was being cared for by her brothers in the Yemen or on the failure of the appellant and sponsor to explain how the appellant had been cared for between 2013 and mid-2016. They were the material issues and on those issues the judge was entitled to have regard to the evidence as a whole and to not consider that the appellant had provided a satisfactory explanation. As regards (ii), I fail to see that there was anything unreasonable in the judge inferring from the absence of evidence about past care of the appellant that she could not be satisfied that she was presently without adequate care.
9. As regards (iii) and indeed (vi), it is true that the judge placed specific importance on the failure of the appellant to establish how care was provided and why it cannot now be provided. It is submitted that in doing so the judge wrongly assumed that there was such a specified evidential requirement in either the Rules or the Home Office guidance. However, in attaching importance to the lack of evidence about past care, I do not consider the judge was reading into the Rules evidential requirements that are not there. The Rules focus entirely on the present circumstances (at the date of decision). It has to be shown that an applicant:

"must be unable, even with the practical and financial help of the sponsor, to obtain the required level of care in the country where they are living, because (a) it is not available and there is no person in that country who can reasonably provide it; or ...".
10. In my view, the judge was aware that this was the relevant rule and all that the judge was doing in highlighting the evidence regarding past care was explaining why she considered that it had not been shown that the appellant was in fact failing to receive the required level of care from her sons and/or others.

11. As regards (iv), I cannot accept that the judge's findings regarding the appellant's son were entirely speculative. It was not in dispute that the appellant had sons. The judge clearly took into account that it was the appellant's and sponsor's evidence was that they were not helping her and were not in contact with her. Having regard to the evidence as a whole, however, the judge did not accept that the appellant had established that her sons were out of the picture. In this regard it was open to the judge to attach particular weight to the fact that the sponsor had not sought the help of the Red Cross to locate her siblings, only her mother.
12. As to (v), and the allegation that the judge failed to have regard to the medical reports which attested that the appellant was not receiving adequate care, the judge noted at para 2 that she had had regard to the appellant's bundle (which included the medical evidence) and made specific reference to the medical evidence in paras 3 and 22-23, specifically quoting from the medical letter of 28 April 2016 in para 23. At para 28 the judge made a specific finding that:-

"28. Whilst I accept that the medical evidence establishes that the Appellant is severely disabled by her medical conditions, and that there is confirmation that she requires 'urgent and permanent personal care' and that the level of care she requires 'is not available in Yemen, both on the public and private levels', what is not established by the medical evidence is how care was being provided between 2013, after the Appellant was discharged from hospital, and mid-2016, when she was readmitted to the hospital, particularly if both the Appellant and the lady with whom she is said to have resided with in a garage were both elderly and seriously ill-treatment."

At para 30 III she specifically identified what she considered lacking in the medical evidence:-

"In order to establish this, I would need evidence from those who have provided this care as to why it can no longer be provided. In the medical evidence it is stated that 'it is agreed that it is imperative that (the Appellant) leaves Yemen as soon as it is possible for her and joins her daughter in the United Kingdom, where life is safe for her and where she can be spending her remaining years in the tender, loving care and mercy of her daughter, who we are certain knows and understands her best. (The Appellant) is confined to one room, trapped and alone'. However, despite this, the medical evidence does not address how she was provided with care between 2013 and when she was readmitted in 2016 and why this care is no longer available."

13. Whilst it is somewhat odd for the judge to have stated at para 28 that the medical evidence confirms that the level of care is not available in Yemen, both on the public and private levels, it is clear that the judge's primary

finding was that it had not been established that the level of care the appellant had been receiving was unavailable; indeed Mr Khan did not seek to suggest otherwise. It cannot be said, therefore, that the judge failed to take adequate account of the medical evidence; she simply did not accept that it had been shown to reflect the true state of affairs. The judge's adverse findings of fact on this matter were reasonably open to her.

14. In short, I consider that the judge was entitled to conclude that it had not been established that the appellant met the requirements of E-ECDR.2.5 because she had failed to show there was no person in Yemen reasonably able to provide her with personal care.
15. What I have referred to above as ground (vii) moves matters on to the judge's finding that the appellant also failed to meet the requirements of E-ECDR.3.1 regarding evidence that the appellant can be reasonably cared for. I am unable to accept that the judge misconstrued the relevant requirements of the Rules or erroneously required the appellant to show planned care arrangements. What the judge was concerned about was not the absence of planned care arrangements but the lack of evidence to show that the sponsor could provide adequate care. Paragraph 30 VII was unequivocal regarding this matter: see para 3 of this determination above].
16. Such an assessment was based on a proper understanding of the relevant Rules. Para E-ECDR.2.4 stipulates that an applicant must require long-term personal care to perform everyday tasks. Para E-ECDR.3.1 requires an applicant to provide evidence, inter alia, that they can be "adequately... cared for in the UK by the sponsor without recourse to public funds". The requirement of care by the sponsor to provide personal care to perform everyday tasks is regrettably a requirement that the sponsor, through no fault of her own, is unable to meet. Mr Khan has correctly pointed out that that in assessing the likely care needs of the appellant in the UK, one must not have regard to NHS treatment, but from the medical evidence as regards the appellant, the treatment she would need would extend well beyond NHS treatment and would include attendance to help with her performance of everyday tasks. Provision of those would involve additional recourse to public funds as defined by para 6 and (b) and (c) of the sub-head on "public funds". In addition, from the evidence before the judge the sponsor, far from being able to provide care to everyone else, was in need of care herself.
17. As regards ground (vii) then (which takes issue with the judge's dismissal of the appeal on Article 8 grounds), it was advanced in unpromising terms in the written grounds and before me by Mr Khan, in seeking to rely on a failure to accept that the appellant met the requirements of the Rules. She did not. That ground as advanced thus falls away. However, I have examined on my own motion the judge's reasons for concluding that the appellant had not shown compelling or exceptional circumstances

warranting a grant of leave outside the Rules. Given the judge's primary findings of fact, it had not been established that the appellant was being inadequately cared for at the date of decision nor had it been established that she could be adequately cared for without recourse to public funds and detriment to the economic wellbeing of the UK. It also seems to me that the judge was entitled to consider that although the situation in Aden was unstable and the security situation there likely to put life and health at risk, against that there was evidence that there could be grave consequences if the appellant were granted entry clearance to travel because she was in an extremely vulnerable physical condition and in the medical letter dated 28 April 2016 it was stated that "a fourth stroke will mean that our patient will be subjected to certain and immediate death".

18. For the above reasons, although it is impossible considering this case not to feel great sympathy for the appellant who clearly is in very frail health and for the sponsor who is also in very poor health, I conclude that the FtT judge did not materially err in law and her decision to dismiss the appellant's appeal must stand.

No anonymity direction is made.

Signed

Date: 26 May 2017



Dr H H Storey
Judge of the Upper Tribunal