



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

Appeal Number: HU/08434/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 4 January 2018**

**Decision & Reasons Promulgated
On 21 February 2018**

Before

UPPER TRIBUNAL JUDGE ALLEN

Between

**MISS G D J
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr J Gajjar (Counsel)

For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal brought by [GDJ] against the decision of the Secretary of State refusing her application for leave to remain in the United Kingdom outside the Immigration Rules. The date of the decision is 3 March 2016.
2. The essential issue as it develops before me is that of the relationship between the appellant and her grandmother. There were other issues that formed part of the challenge to the decision of the judge who dismissed the appeal in August 2017 but Mr Gajjar has refined that down to

essentially the **Kugathas** issue as well I call it the issue of the relationship between the appellant and her grandmother.

3. The judge did not accept that the appellant was her grandmother's carer and said there was no evidence to support her claim that her grandmother required a carer other than that advanced by the appellant in person. The judge said he read carefully the available medical reports. It was quite apparent that the grandmother's conditions were well controlled and there was no suggestion whatsoever for any medical source that the grandmother suffered from any form of medical loss so she had failed to prove the existence of a family relationship with the grandmother within the meaning of Article 8 and the assertion that her sisters would not be able to assist or would be prepared to assist the grandmother was not accepted.
4. The challenge in this regard relates very much to medical evidence that was in abundance before judge from Dr Vincent dated 10 July 2015. That is the letter with reference to the grandmother and it refers in the first paragraph to various physical health problems from which she suffers. She also informs me that she has a carer to help with some of her activities and daily living including her personal care and emotional support, cooking, cleaning, carrying heavy shopping, driving her and ensuring she eats the necessary food and there is the reference in the penultimate paragraph to her granddaughter providing the care and support as listed above which I take to be a reference to the care which is described in paragraph 1. There is also reference in paragraph 2 to side effects from Mrs [J]'s medications which include memory problems and sleepiness.
5. That is, I think, it is probably fair to say, the essence of why Mr Gajjar says this decision is flawed as a matter of law because the judge came to the conclusion at paragraph 13 to which I referred above about the care issue and the memory issue and the evidence that appears to go directly against that. There is a very full Rule 24 response on which Mr Tarlow relied and I understand it is full and normally is thorough and comprehensive. It makes the point with reference to the earlier decision of the First-tier Tribunal in August 2014 which included a witness statement from the appellant in which she did not claim to be acting as carer for her grandmother in the United Kingdom and it is noted from paragraph 6 that this contrasts starting with the claim to have acted as a carer for eight years and any apparent brevity in the judge's findings on its part of the claim is therefore readily explicable and the response also goes on to deal with the issue concerning potential support from the sisters and there are other matters which I think do not need any longer to be addressed in light of Mr Gajjar's narrowing of the grounds.
6. I see the force of the Rule 24 response and Mr Tarlow's reliance on it but it does seem to me that that is vulnerable to the point made by Mr Gajjar that this is not something that was relied on by the judge. The judge did

not say well I see the medical evidence at page 26 of the bundle but in light of the failure by the appellant to mention any of these matters in the 2014 case it seems to me that this simply lacks credibility and the judge did not say that but simply said well there is no evidence to support the claim that the grandmother requires a carer nor is there evidence of memory loss and both of those matters were part of the evidence of the doctor which the judge simply did not take into account. It may well be that on a rehearing of this matter the judge considering things as a whole will come to the same conclusion as this judge came to but I do not feel sufficiently confident that that is going to be so clearly the outcome as a consequence of a full consideration of the earlier decision and the medical evidence that I can say that there is no material error of law in this case.

7. So in my conclusion there is a material error in the failure to take into account the medical evidence in the absence of any relating of that evidence to the evidence in the earlier decision and therefore the appeal is allowed to the extent that it will be remitted for rehearing in full by the First-tier Tribunal.

Notice of Decision

The appeal is allowed to the extent set out above.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.



Signed

Date 19th February 2018

Upper Tribunal Judge Allen