



**Upper Tribunal
(Immigration and Asylum Chamber)
HU/13199/2016**

Appeal Number:

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

On 22 January 2016

Promulgated

On 19 February 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE ESHUN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MISS NUSRAT JAHAN
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms A Holmes, Counsel

For the Respondent: Mr N Aghayere

DECISION ON ERROR OF LAW

1. The Secretary of State has been granted permission to appeal the decision of First-tier Tribunal Judge Sweet to allow the respondent's appeal against a decision of the Secretary of State of 11 May 2016 to refuse her leave to remain under paragraph 276ADE and under Article 8 to help care for her niece and nephew who have complex medical needs.
2. Permission was granted on the basis that it is arguable that the judge erred in concluding that the respondent should be granted leave to remain for twelve months on the understanding that ongoing care arrangements would need to be investigated by the children's parents when they had

already been offered a care package but chose to use the services of the respondent.

3. For ease of reference I shall refer to the respondent as the applicant.
4. The applicant is a citizen of Bangladesh born on 30 October 1986. She obtained a student visa in November 2015. She completed a nine-week English language course and then planned to study for public health. She did not start those studies because of her sister's family situation. She has not visited Bangladesh since that time. Her mother and two brothers live in Bangladesh.
5. On 9 February 2016 the applicant applied for leave to remain in the United Kingdom. Her representative's covering letter made reference to her family and private life (Article 8/human rights). In addition, she also raised that she was currently assisting with the care of her niece and nephew, S and SA. The application was refused on 11 May 2016. The Secretary of State accepted that the applicant's niece and nephew had complex medical needs, but it was not accepted that the applicant would face very significant obstacles to her integration into Bangladesh. Nor could she succeed under Article 8 ECHR because while the applicant's nephew and niece had complex medical needs, such care would be provided by the local authority and medical professionals and there was no requirement for the applicant to provide such care.
6. In the submissions recorded by the judge, Counsel for the applicant referred to a number of documents in the respondent's bundle which set out the high level of care which was required for the applicant's niece, S born on 29 July 2001. There was no question that S was increasingly dependent on the applicant. The submissions also stated that Social Services cannot provide the necessary care and supervision as they are only offering 30 hours' help per week, when S requires observation and assistance 24/7. Therefore, the applicant should be granted discretionary leave to remain.
7. The judge made the following findings:

"12. It is accepted by the parties that the appellant's niece and nephew (who are now aged 16 and 14 respectively) have complex medical needs as a result of their suffering from Bardet-Biedl Syndrome, which is a genetic condition which causes significant health issues including learning difficulties. S, the appellant's niece, who is now aged 16, has also suffered thyroid cancer and has undergone a tracheostomy, which requires ongoing care. There is significant medical evidence that both the children require care and support, both medical and psychological. There is also a third child, D, who is now aged 6, who has not yet shown signs of any medical needs, but providing attention for that young child has placed a further burden on the appellant's parents.

13. *There are letters of support on the file from the appellant's MP and medical and social care professionals, which support the appellant's case that she should be allowed to stay in the UK in order to provide ongoing care. I have had regard to the respondent's concession for carer's policy which is set out in the representative's letter of 9 February 2016. In paragraph 4.3 of that policy it is stated that in cases where there are sufficient exceptional compassionate circumstances to continue the exercise of discretion, leave to remain may be granted for up to 12 months at a time. I am satisfied that this is an exceptional case where the appellant is providing significant support, both social and psychological, to her young niece and nephew in view of their complex medical needs. In my view this is a case where the respondent should grant 12 months' discretionary leave to remain, on the understanding that ongoing care arrangements will need to be investigated by the children's parents, with the help of Social Services and the medical profession. This is for the reason that the appellant, who is now aged 30 and has lived the majority of her life in Bangladesh, may return to Bangladesh, where her other family members live at a later date. The responsibility for providing care is on the parents and public health authorities and not on the appellant herself".*
8. Ms Holmes submitted that the judge failed to give adequate reasons for her decision that the Secretary of State should grant twelve months' discretionary leave to remain, on the understanding that ongoing care arrangements will need to be investigated by the children's parents, with the help of Social Services and the medical profession. Ms Holmes submitted that a care package had been offered to the applicant's niece and nephew by Social Services. The care package was in the form of 30 hours' help per week. Ms Holmes submitted that the judge did not mention this care package at all and had not taken it into consideration in her decision. This was a material error of law.
9. She also stated that the applicant's statement did not mention the care package offered by Social Services. The judge did not mention that there was already a care package available.
10. Ms Holmes referred to Chapter 17, Section 2, the Home Office guidance on carers. Paragraph 17.3.1 was in respect of "granting an initial period of leave to remain". The guidance states:

*"Where the application is to care for a sick or disabled relative it will normally be appropriate to grant leave to remain for three months on Code 3 (no recourse to employment or public funds) **outside the Rules.***

*The applicant **must** be informed that leave has been granted on the strict understanding that during this period arrangements will be made for the future care of the patient by a person who is not subject to the Immigration Rules".*

11. The guidance goes on to say that the applicant must be advised that leave has been granted exceptionally outside the normal requirements of the Immigration Rules to enable the applicant to make permanent arrangements for the future care of their relative by a person who is not subject to immigration control; and that it is unlikely that any further leave will be granted on this basis.
12. Ms Holmes also referred to paragraph 17.4.1 which refers “to granting a further period of leave to remain”. This guidance states that where there are sufficient exceptional compassionate circumstances to continue the exercise of discretion, leave to remain may be granted for up to twelve months at a time; and that in all cases it **must** be made clear to the carer that they are acting exceptionally outside the Immigration Rules.
13. Mr Aghayere relied on the Rule 24 response. He submitted that there was a care plan for the applicant’s niece and nephew and this was for 30 hours. However, because the niece and nephew needed 24-hour care per week and not 30 hours as provided by the authorities, that was why the judge made the findings at paragraph 13. I asked Mr Aghayere whether the care provided by the applicant replaced the 30 hours care provided by Social Services or was in addition to the care provided by Social Services. He referred to a letter from Enfield Social Services at page 20 of the applicant’s bundle which said that additional support was encouraged. He said this means that the support given by Enfield Social Services was not sufficient and they were encouraging additional support.
14. If that were the case, I find that the judge did not include it in her decision. Indeed, the judge did not mention any of this evidence that Mr Aghayere has referred me to. I find that his submissions support Ms Holmes’ submission that the judge made no reference to the care package that had been offered by Enfield Social Services. This care package did not feature in her decision at all.
15. I also find that the judge erred in law in deciding that the applicant should be granted twelve months’ discretionary leave to remain on the understanding that ongoing care arrangements will need to be investigated by the children’s parents, with the help of Social Services and the medical profession. I find that again this stems from the failure of the judge to mention that there was already a care package in place. The judge’s failure to mention this vital evidence materially undermines her decision.
16. In any event, the respondent’s guidance on carers indicates that there is an initial grant of three months before a further grant of twelve months is considered.
17. Consequently, I find that the judge erred in law in her decision.
18. The judge’s decision cannot stand. It has to be re-made.

19. The applicant should provide evidence from Enfield Social Services to inform the court whether:
- (1) the 30-hour care package that is in place has been agreed with the children's parents, and
 - (4) whether the care provided by the applicant is in addition to the care Social Services are currently providing.
20. The appeal is remitted to Hatton Cross to be reheard by a judge other than FtTJ Sweet.

No anonymity direction is made.

Signed

Date: 14 February 2018

Deputy Upper Tribunal Judge Eshun