



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/25693/2016

THE IMMIGRATION ACTS

Heard at Field House
On 25 July 2018

Decision Promulgated
On 16 August 2018

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

S B

Appellant

and

ENTRY CLEARANCE OFFICE (DHAKA)

Respondent

Anonymity

Rule 14: The Tribunal Procedure (Upper Tribunal) Rules 2008

It is appropriate to grant anonymity given the vulnerability of the appellant and the nature of his medical conditions. 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 his 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.

Representation:

For the appellant: Mr M. West, instructed by Londonium Solicitors

For the respondent: Mr D. Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appealed the respondent's decision dated 19 October 2016 to refuse a human rights claim in the context of an application for entry clearance as an Adult Dependent Relative.
2. First-tier Tribunal Judge Callow dismissed the appeal in a decision promulgated on 10 November 2017. The Upper Tribunal concluded that the decision involved the making

of an error of law and set aside the decision on 12 June 2018 (annexed). The appeal was listed for a resumed hearing to remake the decision.

3. The parties agree that the only issue to be determined is whether the appellant meets the requirements of paragraph E-ECDR.2.5 of Appendix FM of the immigration rules.
4. The sponsor (the appellant's brother in law - "SM") attended the hearing and gave evidence in English. The sponsor's wife (the appellant's sister - "KB") also gave evidence. The witnesses were asked a number of questions about their personal circumstances and those of the appellant in Bangladesh. Their evidence is a matter of record. The relevant details of the evidence given by the witnesses are incorporated into my findings of fact below.
5. I have taken into account the appellant's grounds of appeal, the oral evidence and submissions along with the reasons given for refusing the application before coming to a decision in this appeal.

Legal Framework

6. Paragraph E-ECDR.2.5 of Appendix FM of the immigration rules states:

'E-ECDR.2.5. The applicant or, if the applicant and their partner are the sponsor's parents or grandparents, the applicant's partner, 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
 - (b) it is not affordable.'
7. The evidential requirement relating to this provision contained in paragraph 35 of Appendix FM-SE states:

'35. Independent evidence that the applicant is unable, even with the practical and financial help of the sponsor in the UK, to obtain the required level of care in the country where they are living should be from:

 - (a) a central or local health authority;
 - (b) a local authority; or
 - (c) a doctor or other health professional.

36. If the applicant's required care has previously been provided through a private arrangement, the applicant must provide details of that arrangement and why it is no longer available.

37. If the applicant's required level of care is not, or is no longer, affordable because payment previously made for arranging this care is no longer being made, the applicant must provide records of that payment and an explanation of why that payment cannot continue. If financial support has been provided by the sponsor or other close family in the UK, the applicant must provide an explanation of why this cannot continue or is no longer sufficient to enable the required level of care to be provided.'

8. In *BRITCITS v SSHD* [2017] EWCA Civ 368 the Court of Appeal made the following findings:

- “58. First, the policy intended to be implemented by the new ADR Rules, as appears from the evidence, the new ADR Rules themselves and the Guidance, and confirmed in the oral submissions of Mr Neil Sheldon, counsel for the SoS, is clear enough. It is twofold: firstly, to reduce the burden on the taxpayer for the provision of health and social care services to those ADRs whose needs can reasonably and adequately be met in their home country; and, secondly, to ensure that those ADRs whose needs can only be reasonably and adequately met in the UK are granted fully settled status and full access to the NHS and social care provided by local authorities. The latter is intended to avoid disparity between ADRs depending on their wealth and to avoid precariousness of status occasioned by changes in the financial circumstances of ADRs once settled here.
59. Second, as is apparent from the Rules and the Guidance, the focus is on whether the care required by the ADR applicant can be "reasonably" provided and to "the required level" in their home country. As Mr Sheldon confirmed in his oral submissions, the provision of care in the home country must be reasonable both from the perspective of the provider and the perspective of the applicant, and the standard of such care must be what is required for that particular applicant. It is possible that insufficient attention has been paid in the past to these considerations, which focus on what care is both necessary and reasonable for the applicant to receive in their home country. Those considerations include issues as to the accessibility and geographical location of the provision of care and the standard of care. They are capable of embracing emotional and psychological requirements verified by expert medical evidence. What is reasonable is, of course, to be objectively assessed.”

Decision and reasons

9. This is a ‘new style’ appeal following the changes made to Part V of the Nationality, Immigration and Asylum Act 2002 (“NIAA 2002”). Following the repeal of section 85A of the NIAA 2002 the Tribunal is no longer restricted to considering the circumstances appertaining to the date of decision in an appeal involving refusal of entry clearance.
10. It is not disputed that the appellant received some medical care in Bangladesh in the past, or that some level of social care might be available through a limited number of providers. The question for determination in this appeal is whether the full range of medical treatment and social care the appellant requires is available in Bangladesh, and if it is, whether the care is affordable.
11. The Upper Tribunal summarised the medical evidence in the error of law decision as follows:
- “12. Although there was evidence to indicate that the appellant had been in receipt of some medical care in Bangladesh, the First-tier Tribunal decision discloses no assessment of whether the appellant was able to obtain the ‘required level of care’ in Bangladesh. The evidence from Professor Alam, a psychiatrist who had been treating the appellant for a “*couple of years*” was that, despite his treatment, the appellant’s condition had not improved. In his opinion it was likely that he was not taking his medication regularly due

to his *“physical and mental instability”*. He made clear that the appellant required *“full support from someone that he is not getting”*. In his opinion others could not provide the care he needed. Close monitoring was better provided by a close relative.

13. Dr Noman, a consultant at the Chittagong Eye Care Center, stated that the appellant was suffering from glaucoma. He had lost the vision in one eye and the other eye had *“few percentage of eye vision”*. He concluded: *“He is in danger conditions as he might be completely blind in future and it is advisable to look for better treatment somewhere as this is not available in Bangladesh.”*
12. The medical evidence shows that the appellant has been diagnosed with a range of serious medical conditions including epilepsy, schizophrenia and glaucoma in both eyes (blind in one eye and limited and deteriorating vision in the other). Although the reports are limited in nature, there is no dispute that the appellant suffers from these conditions.
13. The appellant’s sponsor, SM, is the appellant’s brother in law. He has taken responsibility for the appellant’s care since his father in law died in 2009. The appellant’s sister and mother live with SM in the UK. First-tier Tribunal Judge Callow found SM to be a credible witness. I have also had the opportunity to hear evidence from SM and his wife, KB. They gave their evidence in an open and natural manner. I have been given no reason to doubt their evidence and found them to be credible witnesses.
14. SM described an increasingly desperate situation in which he has attempted to support his brother in law at a distance from the UK. The fact that SM has taken responsibility for the appellant’s welfare indicates that the appellant has no direct relatives in Bangladesh who are willing or able to assume responsibility for his care. His mother and sister live in the UK. His other sister lives in Canada and a brother lives in India. Although another relative, TB, has assisted SM to make enquiries about possible care services in Bangladesh, he is a distant relative who makes clear in his statement that he is not in a position to care for the appellant.
15. SM arranged for his brother, MC (who is not a direct relative of the appellant), to accommodate him. The appellant has lived with SM’s brother for a number of years. It seems that this was a financial agreement whereby SM pays his brother a sum of money each month to accommodate the appellant. However, it seems clear that the arrangement has come under increasing strain and that SM’s brother has only agreed to accommodate the appellant under sufferance in the last few years.
16. MC wrote a letter on 02 September 2016 to say that he is no longer able to look after the appellant because his daughter is grown up. The sub-text that became apparent at the hearing is that the appellant is not permitted to be in the house with MC’s unmarried daughter. This is consistent with social mores in Bangladesh. SM explained that the consequence is that the appellant is not permitted to remain in the house during the day and is only allowed back to the house in the evening when his brother returns home. This situation renders the appellant particularly vulnerable given his disabilities. He spends his time wandering the streets. In the last year he has been injured in two accidents, the most recent being on 12 June 2018 when his ankle was

broken when he was hit by a passing scooter. SM has produced medical evidence to support this aspect of his account.

17. KB is clearly distressed by her brother's circumstances and gave evidence about the current situation in emotive terms. She described the situation as one of neglect and abuse by the host family, despite the funds that they send every month. They do not help him to obtain or take his medication. SM said that he used to buy several months' supply of medication for the appellant, but had not done so for some time because there was no one there to help him take the medication. The appellant was unable to administer the medication himself because of his poor eyesight. Although it is not stated in terms, I find that it is reasonable to infer that a person who has been diagnosed with schizophrenia, who has not taken medication for some time, might not be well enough to administer their own medication.
18. KB told me that her mother, who she cares for in the UK, has several age-related health issues and is at the end stage of kidney disease. The evidence shows that her mother is equally distressed about the appellant's situation. A letter from the renal medicine clinic at the Royal London Hospital to her GP dated 27/02/17 said:

"Ms [B] was reviewed in the Low Clearance Clinic of behalf of Professor Yaqoob. She was accompanied by her daughter who was a practicing general physician in Bangladesh but is now looking after her mother full-time.

Ms [B] is a frail diabetic patient. She is actually 80 years old but her date of birth has been recorded incorrectly on her documentation. Her daughter is very well read on the options and they have collectively come to the decision that dialysis would not be in her best interests and would like to receive supportive care. ... Supportive care will prioritise symptom relief at end-stage kidney disease as well as provide all other medical management short of dialysis. Resuscitation was discussed and they are in agreement that she should not be for resuscitation or interventions greater than non-invasive ventilation (including mechanical ventilation or renal replacement therapy).....

She is extremely troubled by the plight of her son (S B) who remains in Bangladesh. He has epilepsy and schizophrenia and is being neglected and abused at home. Her daughter and her daughter's husband are being exploited for money and the whole situation is of great stress to her. She broke down in tears when describing their ordeal. A recent application to the Home Office for him to be brought to the UK was declined. Having her suffering son moved here in a safer environment will provide her with greater dignity in the latter years of her life and I hope this could somehow be achieved."

19. After the recent accident, the appellant was told that he should not put weight on the injured ankle and needed bed rest. SM's brother would not permit him to stay in the house so the only option he had was to move his brother to stay temporarily with his elderly parents in the village. No one else was there to assist the appellant. SM travelled to Bangladesh to find a solution to the problem. However, his parents are not able to accommodate him for anything more than a temporary period. There is insufficient accommodation. His father is unwell and his mother has diabetes. He said that he did not know what he would do when the appellant's injury healed. The thought

that the only option would be to beg his brother MC to look after the appellant for a few more months.

20. SM produced evidence to show that he has made efforts to find suitable care facilities in Bangladesh. SM and his wife have made enquiries from the UK and TB has also taken steps to investigate what adult care services might be available. The limited number of organisations that they were able to identify were, in the main, unsuitable. They did not provide the care the appellant needs and most provided palliative care services. SM produced evidence regarding enquiries made with an organisation called Hospice Bangladesh Ltd. The Upper Tribunal summarised the evidence as follows in the error of law decision:

“9. In this case there was evidence from an organisation called Hospice Bangladesh Ltd. in Dhaka to show that the organisation could provide a certain level of nursing and adult care services. In his enquiry, the sponsor listed the medical issues the appellant suffers from and provided details about the appellant’s age and current circumstances. Hospice International replied in short form stating that they did not have inpatient facilities, but did have a *“collaborative inpatient center where you can keep the patient and our care giver take care of the person.”* When the sponsor asked for a rough estimate of the prices Hospice International confirmed that nursing care was 2,000 Taka per day and a room would cost 3,000-10,000 Taka per day with discounts for long term stay. The evidence showed that the cost of care in the facility was likely to be around 5,000-12,000 Taka per day (OANDA conversion = circa. £45-£105 per day). This would amount to basic costs of care amounting to something in the region of £16,500-£38,000 a year.”

21. The figures do not include additional costs of medication or other medical treatment. The evidence indicates that care might be available outside the appellant’s home area in Dhaka. However, it would come at a heavy financial cost to the sponsor and would still leave the appellant without the kind of emotional support that Professor Alam thought should come from a close relative. In addition to the financial cost, SM expressed concern about monitoring the care that the appellant might receive from the UK. Care facilities in Bangladesh are not closely regulated and he was worried that it would be difficult for him to ensure that the appellant was being cared for properly.
22. Although the evidence shows that it might be possible to put in place some level of care for the appellant, the options are limited and would come at a cost. The care provided by an organisation such as Hospice Bangladesh Ltd. would not include the kind of emotional support that is likely to be an integral part of the appellant’s care. Other evidence indicates that more advanced care for the appellant’s deteriorating eyesight is not likely to be available in Bangladesh.
23. KB is not in employment because she is a full-time carer for her mother. Although her mother has returned to Bangladesh to visit her son in the past, she is no longer able to do so. She is in the final stages of kidney disease and is now bed bound. KB is confident that she would also be able to care for her brother. Given the fact that she was a medical practitioner in Bangladesh, she is well qualified to provide the kind of care the appellant needs, both in terms of assisting him to take the correct medication and providing the emotional support of a close relative. She said: *“I am his first blood and only I can heal his pain”*.


24. Mr Clarke argued that the evidence must come from an independent source according to the evidential requirements of Appendix FM-SE. There is independent evidence from Dr Noman to say that the required level of medical care for glaucoma is not available in Bangladesh. The background evidence of the World Health Organisation and information contained in the Home Office County of Origin Information report indicates that government facilities for treating people with mental disabilities are inadequate. There is no specific mental health authority in Bangladesh, and although some care is available, it is limited compared to the size of the population. In relation to the care facilities, it is difficult to see how an independent source could reasonably be expected to confirm the information. The evidence indicates that care facilities are likely to be privately funded. The sponsor has disclosed evidence to show that he has made reasonable efforts to find suitable care. While some care is available, it is not the full level of care that is required for the appellant. I conclude that the 'required level of care' for this appellant is not available and that there is no person who can reasonably provide it. For these reasons the appellant meets the requirements of paragraph E-ECDR.2.5(a) of Appendix FM.
25. If I am wrong in relation to the first point, I am satisfied that the care offered by Hospice Bangladesh Ltd. is not likely to be affordable for the sponsor. The appellant is not an elderly dependent relative requiring end of life care. He is 44 years old and will require ongoing care over a number of years.
26. The sponsor's personal circumstances have changed since the last hearing. Although the evidence relating to his financial situation is rather limited, he has outlined his income and expenditure in a schedule. The sponsor is a credible witness. I am satisfied that I can accept his evidence.
27. SM told me that, since the last hearing, he and his wife moved to Birmingham. He spent a portion of his savings refurbishing the house. His HSBC statement showed a balance of £27,012.68 on 10 June 2018. The level of his savings has reduced by around £20,000.
28. At the date of the First-tier Tribunal hearing SM earned income from employment and received rental income from several properties. He gave up work in August 2017 and moved to Birmingham in October 2017. He says that he has not worked since he moved to Birmingham. He is in the final year of a PhD and plans to start his own business. At the current time he is relying on the rental income from the three properties he owns in London, which are subject to mortgages. He has set out a schedule of the income and outgoings on those properties. The schedule indicates that he has a gross monthly income of £1,603 from the properties. He has also set out an estimate of his monthly expenses for the family home including the costs of his mortgage, utilities, food and transport expenses. He has also included a monthly remittance of £200, which is sent "abroad". It was not clarified, but it seems likely that this may be the money sent to his brother MC to care for the appellant. SM's monthly living expenses come to around £1,476, thereby leaving him with very little in the way of disposable income.
29. Mr Clarke argued that the sponsor has assets that could pay for the appellant's care in Bangladesh. He suggested that the sponsor could either (i) sell a property; or (ii) release equity from the existing properties. I find that neither of these suggestions are reasonable or proportionate. The first would require the sponsor to sell an asset upon

which he currently relies as his sole source of income, thereby reducing his monthly income to a level where he is not likely to be able to cover his own expenses. The second option suggests that he should place himself in debt to pay for the appellant's care. Given that the appellant is likely to need ongoing long-term care, both suggestions would only provide a temporary source of funding. The term 'affordable' should be given its ordinary meaning and should be assessed on the facts of each case. If the sponsor is unable to pay for the kind of long-term care the appellant requires from resources that are reasonably available to him it is not 'affordable' within the meaning of the immigration rules. Even if an organisation such as Hospice Bangladesh Ltd. was able to provide the care required, the monthly costs of around £1,300-£3,200 (on the estimates outlined above) are beyond what SM could reasonably afford on his current income. For these reasons I find that the appellant also meets the requirements of paragraph E-ECDR.2.5(b) of Appendix FM.

30. The circumstances of this case engage the appellant's private life (physical and moral integrity) and his family life with close relatives in the UK upon whom he is entirely dependent. Paragraph GEN.1.1 of Appendix FM states that the requirements of the immigration rules reflect how, under Article 8 of the Human Rights Convention, the balance will be struck between the right to respect for private and family life and the legitimate aim of maintaining an effective system of immigration control. For the reasons outlined above I find that the appellant meets the requirements of the immigration rules. The decision to refuse entry clearance shows a lack of respect for the appellant's rights under Article 8 which is disproportionate on the facts of this case. I conclude that the decision is unlawful under section 6 of the Human Rights Act 1998.
31. I would urge the entry clearance post to prioritise this case given the appellant's vulnerability and his precarious circumstances in Bangladesh.

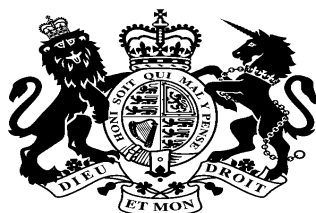
DECISION

The appeal is allowed on human rights grounds

Signed 
Upper Tribunal Judge Canavan

Date 09 August 2018

[ANNEX]



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/25693/2016

THE IMMIGRATION ACTS

Heard at Field House
On 23 April 2018

Decision Promulgated

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Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

S B

Appellant

and

ENTRY CLEARANCE OFFICER (NEW DELHI)

Respondent

Representation:

For the appellant: Mr M. West, Counsel instructed by Londonium Solicitors
For the respondent: Mr I. Jarvis, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appealed the respondent's decision dated 19 October 2016 to refuse a human rights claim in the context of an application for entry clearance as an Adult Dependent Relative.

2. First-tier Tribunal Judge Callow (“the judge”) dismissed the appeal in a decision promulgated on 10 November 2017. The judge made the following findings relating to the requirements of Appendix FM of the immigration rules:
 - “7. In giving his evidence, the sponsor impressed as being a credible witness. Notwithstanding the deficiencies in the documentary evidence it has been established on a balance of probabilities that the parties are related as claimed and that the appellant, financially supported by the sponsor, needs care. However, there are facilities available in Bangladesh and the sponsor, a man of means owning four properties in employment and with savings of £50,000, can pay for the appellant to be cared for by Hospice Bangladesh Ltd or a similar organisation and can continue to receive treatment from psychiatrists and eye specialists in Bangladesh.
 8. As to the care required by the appellant, I draw on the guidance in BRITCITS [2017] EWCA Civ 368 at [59]: ‘Second, as is apparent from the Rules and the Guidance the focus is on whether the care required by the ADR applicant can be “reasonably” provided and to “the required level” in their home country. As Mr Sheldon confirmed in his oral submissions, the provision of care in the home country must be reasonable both from the perspective of the provider and the perspective of the applicant, and the standard of such care must be what is required for that particular applicant. It is possible that insufficient attention has been paid in the past to these considerations, which focus on what care is both necessary and reasonable for the applicant to receive in their home country. Those considerations include issues as to the accessibility and geographical location of the provision of care and the standard of care. They are capable of embracing emotional and psychological requirements verified by expert medical evidence. What is reasonable is, of course, to be objectively assessed. The facts in the present appeal are such that the required care concerning the appellant can reasonably be provided at the required level in Bangladesh.’”
3. The judge went on to consider whether the refusal of entry clearance might constitute a breach of Article 8 outside the immigration rules. He accepted that the appellant had a ‘family life’ within the meaning of Article 8 with the sponsor and his wife in the UK, but concluded that the interference was proportionate in the circumstances of the case [18]. The judge rejected the assertion that the UK had an obligation to consider whether Article 3 justified admitting the appellant to the UK on health grounds. He distinguished this case from *SSHD v MM (Zimbabwe)* [2017] EWCA Civ 797, which involved the deportation of a foreign criminal from the UK [22].
4. The appellant appealed the First-tier Tribunal decision on the following grounds:
 - (i) The First-tier Tribunal failed to give adequate reasons and/or failed to conduct an adequate analysis of the tests set out in the immigration rules.
 - (ii) The First-tier Tribunal’s failure to conduct an adequate analysis of the immigration rules impacted on the assessment of where a fair balance should be struck under Article 8 of the European Convention outside the rules.
5. First-tier Tribunal Judge P.J.M. Hollingworth granted permission to appeal in the following terms:

“It is arguable that the Judge has set out an insufficient analysis in relation to whether the Immigration Rules were fulfilled or not. In these circumstances it is arguable that the Judge’s conclusion in relation to the Immigration rules has affected the carrying out of the proportionality exercise. It is arguable that the Judge should have explained the weight attached to the factors put forward in the evidence on behalf of the Appellant in relation to the argument that the Immigration Rules had been fulfilled. The permission application delineates the scope of the available evidence in relation to the question of whether the Immigration Rules had been fulfilled. It is arguable that the Judge has not analysed the financial position of the Sponsor to a sufficient degree and that the ongoing financial position has thereby been assessed wrongly. It is arguable that the background material in relation to the facilities available in Bangladesh has received insufficient analysis.”

Decision and reasons

6. This is a borderline decision, but having considered the evidence put forward in support of the appeal before the First-tier Tribunal, I conclude that the First-tier Tribunal failed to give adequate reasons to explain why the appellant failed to meet the requirements of the relevant immigration rules and that this impacts on the First-tier Tribunal’s overall assessment of Article 8.
7. The judge outlined the relevant aspects of the immigration rules [4]. He noted some of the evidence when he summarised what happened at the hearing. However, the only findings relating to the evidence were contained at [7]. The judge concluded that the sponsor would be able to afford to pay for care in a facility such as Hospice Bangladesh Ltd. The judge then cited the decision in *BRITCITS* and stated that the appellant’s care could “*reasonably be provided at the required level in Bangladesh*” [8].
8. Whether the judge’s findings were sufficient depends on the nature of the evidence before him. If the evidence was not capable of meeting the requirements of the immigration rules, it is unlikely that any failure to give adequate reasons would amount to a material error of law.
9. In this case there was evidence from an organisation called Hospice Bangladesh Ltd. in Dhaka to show that the organisation could provide a certain level of nursing and adult care services. In his enquiry, the sponsor listed the medical issues the appellant suffers from and provided details about the appellant’s age and current circumstances. Hospice International replied in short form stating that they did not have inpatient facilities, but did have a “*collaborative inpatient center where you can keep the patient and our care giver take care of the person.*”. When the sponsor asked for a rough estimate of the prices Hospice International confirmed that nursing care was 2,000 Taka per day and a room would cost 3,000-10,000 Taka per day with discounts for long term stay. The evidence showed that the cost of care in the facility was likely to be around 5,000-12,000 Taka per day (OANDA conversion = circa. £45-£105 per day). This would amount to basic costs of care amounting to something in the region of £16,500-£38,000 a year.
10. Even if the sponsor was in full time employment at a supermarket and had savings of £50,000, he also has financial commitments in the form of mortgages and responsibility

for supporting his family in the UK. On the evidence, the cost of care in the facility that the judge considered would be available for the appellant's care was likely to be a significant financial outlay, but the decision discloses no consideration of whether this level of financial commitment was affordable to the sponsor in the long term.

11. Nor was there any analysis of the medical evidence produced in support of the appeal. At [8] the judge stated that the *"required care concerning the appellant can reasonably be provided at the required level in Bangladesh"*, but failed to give any reasons to explain this finding.
12. Although there was evidence to indicate that the appellant had been in receipt of some medical care in Bangladesh, the First-tier Tribunal decision discloses no assessment of whether the appellant was able to obtain the 'required level of care' in Bangladesh. The evidence from Professor Alam, a psychiatrist who had been treating the appellant for a *"couple of years"* was that, despite his treatment, the appellant's condition had not improved. In his opinion it was likely that he was not taking his medication regularly due to his *"physical and mental instability"*. He made clear that the appellant required *"full support from someone that he is not getting"*. In his opinion others could not provide the care he needed. Close monitoring was better provided by a close relative.
13. Dr Noman, a consultant at the Chittagong Eye Care Center, stated that the appellant was suffering from glaucoma. He had lost the vision in one eye and the other eye had *"few percentage of eye vision"*. He concluded: *"He is in danger conditions as he might be completely blind in future and it is advisable to look for better treatment somewhere as this is not available in Bangladesh"*.
14. The evidence before the First-tier Tribunal was at least capable of supporting a claim that the level of care and treatment that the appellant required was not likely to be available in Bangladesh, and that despite the sponsor's financial assets, the cost of care might not be affordable on a long-term basis. In such circumstances, it was incumbent on the First-tier Tribunal to give adequate reasons with reference to the relevant requirements set out in the immigration rules. In my assessment, the findings made at [7-8] of the decision did not engage sufficiently with the evidence. The failure to give adequate reasons amounts to an error of law.
15. The First-tier Tribunal decision involved the making of an error of law. The decision is set aside. The normal course of action is to remake the decision in the Upper Tribunal even if some further fact finding is necessary (Practice Statement – 25 September 2012).

Directions


16. The parties shall file any further evidence relied upon with an application to adduce such evidence under paragraph 15(2A) of The Tribunal Procedure (Upper Tribunal) Rules 2008 (as amended) at least **seven days** before the next hearing.
17. If the appellant intends to call any additional evidence from witnesses, he must notify the Upper Tribunal **within 21 days of the date this decision is sent** of (i) the name of the witness; (ii) file a witness statement for each witness; and (iii) confirm whether the witness requires the assistance of an interpreter.

DECISION

The First-tier Tribunal decision involved the making of an error on a point of law

The decision is set aside

The appeal will be listed for a resumed hearing in the Upper Tribunal

Signed 
Upper Tribunal Judge Canavan

Date 11 June 2018