IAC-AH-DN-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/16040/2019 (V)

THE IMMIGRATION ACTS

Heard by Skype at Field House	**Decision & Reasons Promulgated**
On 3rd November 2020	**On 19th November 2020**

Before

UPPER TRIBUNAL JUDGE RIMINGTON

Between

FAHRIJE VITIA
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Ms Kate Jones instructed by Reiss Edwards Solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a national of Kosovo born on 15th March 1943 and is 76 years old. She made an application for leave to remain in the United Kingdom on the basis of her private and family life on 13th May 2019 and this was refused by the respondent on 12th September 2019 under paragraph 276ADE. It was noted that she had flown unaccompanied to the United Kingdom when she had previously entered on 30th November 2018. She entered on a visit visa valid until 18th August 2019, after the

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death of her husband in 2018 and remained in the United Kingdom pending her application decision.

2. First-tier Tribunal Judge Buttar dismissed her appeal and the appellant with permission challenges that dismissal.

3. The appellant's five children, twelve grandchildren and two great-grandchildren all live in the UK and are British citizens. The appellant is said to have no relations in Kosovo.

4. The grounds of appeal were as follows. First, there was an erroneous consideration of material facts which materially informed the judge's Article 8 analysis. The factual basis on which an analysis of Article 8 principles are to be considered is a crucial aspect with the exercise identified in **EB (Kosovo) v Secretary of State for the Home Department [2008] UKHL 41**.

5. The judge erred in her consideration of the medical evidence relevant to the ability of the appellant to travel to Kosovo. The judge determined that "In the absence of an updated medical report I find that she can travel to Kosovo as she travelled here in 2018" (paragraph 30).

6. The medical report however, submitted by Dr Balendra dated 2nd August 2019 stated that the appellant "Is currently not fit to travel, given that we do not know the full extent of her ascending thoracic aortic aneurysm (and this could potentially be life threatening) and requires urgent assessment which we are currently awaiting" (appellant's bundle page 18). The medical report constituted evidence that the appellant was currently not fit to travel and this evidence postdated the appellant travelling to the UK in November 2018.

7. Consequently, it was submitted, the judge made an erroneous finding that the appellant was fit to travel, and this finding informed the subsequent Article 8 analysis. That was a material error.

8. Secondly, the judge erred in consideration of the care currently provided by the appellant's two granddaughters Dafina and Jetesa with whom she lived. Dr Balendra stated in the medical report the appellant was unable to walk without assistance and she struggles with all activities of daily living and requires assistance with everything including showering, dressing, cooking, eating, cleaning, feeding and shopping.

9. The appellant's granddaughters set out in their witness statements the care they provided on a daily basis and they detailed that they had arranged their jobs around the appellant to ensure that she is not left alone. Dafina in her evidence clarified she worked from home remotely. The judge concluded in error in the face of contrary evidence that although the granddaughters may assist her in her day-to-day activities this is minimal and when they are not working. The judge failed to consider the granddaughters' evidence.

10. This error permeated the further consideration of whether family life existed between the appellant and her granddaughters. The judge considered in error that the granddaughters had only been able to provide limited care as full-time workers. The judge erred on the facts and based her consideration in relation to Article 8.

11. Thirdly, the judge failed to consider the fact of the appellant's illiteracy and her technological incompetence as regard the isolation she would face if returned to Kosovo. The fact of this specifically on her vulnerability if returned to Kosovo in the wake of her husband's death was a factor relevant to her moral and physical integrity as per **Botta v Italy (Application No 2. 21439/93).**

12. Permission to appeal was granted by First-tier Tribunal Judge Zucker on the basis that the judge arguably misread the medical evidence.

13. At the hearing Miss Adams on behalf of the appellant submitted that the medical evidence that being the letter from the GP dated August 2019 was not properly considered. The judge simply stated that the appellant was able to travel did not properly weigh into the Article 8 balancing exercise the factor of that medical evidence. Further, the judge had not properly considered the relationship between the grandmother and the granddaughters who helped her sleep, shower and matters of daily living which went beyond minimal assistance. The Appellant could not read or write and her husband had passed away in Kosovo in 2018. The level of assistance went above and beyond that which is required for family life.

14. Mr Clarke submitted that the grant of appeal was very limited in scope and further to Section 84 of the Nationality, Immigration and Asylum Act 2002 the grounds of appeal related to unlawful removal and in the absence of that removal there would be no breach of Article 8. In terms of fitness to fly, the appellant would be assessed prior to any removal.

15. In relation to the findings of fact it was correct that there was a pre-existing condition of which the appellant and the GP did not know the full extent and there was no evidence before the Tribunal regarding the proposed assessment and as such the findings were open to the judge.

16. In relation to the second issue the judge did not quibble with the extent of the care but properly assessed family life and made her findings in the alternative. That said the extent of the care was predicated on the witness statement of the appellant herself. The judge made unchallenged findings at paragraph 39 in relation to care homes and private homes in Kosovo and the findings had to be considered in the light of **Kamara [2016] EWCA Civ 813** such that the appellant would be an insider in Kosovo.

17. The findings spoke to the Rules and the findings on suitable care were not challenged. The failure to refer to illiteracy was not a material error of law.

Analysis

18. In his analysis the judge at paragraph 18 set out the appellant's case fully, noting that the appellant asserted was not able to travel owing to her medical conditions, her ascending thoracic aortic aneurysm and other medical conditions would not be sufficiently treated in Kosovo without the care of a family member, and care facilities in Kosovo did not conform with her religious beliefs. The judge specifically referred to the letter from Dr Balendra from the Watling Medical Centre dated 2nd August 2019, a GP, that the appellant suffered from various medical conditions. Nonetheless the judge noted, importantly, that the medical conditions were pre-existing and that the appellant had travelled to the United Kingdom with those pre-existing conditions and with medications obtained whilst in Kosovo and that further, it was the respondent's case that she could obtain treatment in Kosovo even if she had to pay for it. The judge specifically at paragraph 30 turned her mind to whether there were significant obstacles to returning the appellant to Kosovo specifically with the medical conditions in mind and without her husband to support her there owing to her medical conditions.

19. The judge noted specifically the appellant had multiple diagnoses including ascending thoracic aortic aneurysm and albeit that the judge states, "The letter dated 2nd August 2019 states the condition may be life threatening but does not inform me that she cannot travel or that appropriate care is not available in Kosovo at the date of the hearing", in effect the judge found the appellant she had travelled here with that same condition and she was receiving appropriate care for her pre-existing medical conditions in Kosovo. There was nothing to suggest that she could not receive medical treatment appropriate to her conditions in Kosovo. It was accepted that there was no evidence that she could not receive such medical treatment. That was not challenged

20. Turning to the medical evidence itself, it is correct to state that in the GP letter that the appellant was described as "currently not fit to travel, given that we do not know the full extent of her ascending thoracic aortic aneurysm (and this could potentially be life threatening) and requires urgent assessment which we are currently awaiting" but there was no updated assessment provided. The judge specifically states, "In the absence of an updated medical report I find that she can travel to Kosovo as she travelled here in 2018". Those findings were open to the judge bearing in mind the appellant had travelled her with that pre-existing condition.

21. There was no indication that there was updated medical evidence to show how her condition had deteriorated since she last travelled ,and on the basis of the GP report which specifically identifies that a further assessment was being awaited and in view of what I have to say below, I am not persuaded that there was any material error of law.

22. As Mr Clarke submitted the appellant would be assessed prior to any removal and thus the fitness to travel was not necessarily a relevant factor in the Article 8 balancing exercise. Section 84 of the Nationality, Immigration and Asylum Act speaks to the breach of Article 8 rights on removal and any such removal would be subjected to a pre-assessment.

23. The judge took into account that the appellant had travelled to the UK only months prior to the letter dated August 2019 from Dr Balendra and that she had pre-existing conditions. The judge construed the letter such that there was in effect little detail that the appellant could not travel as at the date of the hearing.

24. In the absence of a full and comprehensive detailed report on the ascending thoracic aortic aneurysm and bearing in mind the doctor referred to the multiple medical conditions as being chronic and lifelong, I do not find that the judge erred in approach to that medical evidence. On careful reading of the framing of the medical report I find that there is no force to the grounds of challenge.

25. As Mr Clarke pointed out the judge did find loving emotional ties existed between the granddaughters and the appellant and clearly took cognisance of the granddaughters' and appellant's witness statements and oral evidence. It was open to the judge to find this assistance limited. It was on the appellant's own evidence that her granddaughters assisted her only to the extent when they were not working. As the judge reasoned both granddaughters have full time jobs (one the judge noted worked for the police) and the detail in the appellant's witness statement was limited in detail.

26. The judge specifically stated, "I find that although her granddaughters may assist her in her day-to-day activities, this is minimal and when they are not working", and "limited day-to-day activities that the granddaughters will actually have been able to provide to their grandmother as full-time workers."

27. Further, the oral evidence of Dafina Zeqiraj, as the judge recorded, conflicted with that of her sister. The implication from Dafina was that the grandmother had medicine brought back from Kosovo for her and used an online doctor. Indeed, Dafina stated in oral evidence that she had not actually received medical treatment and that she had merely an overview of the conditions that she suffered. By contrast Jetesa said that Dafina and her uncle had taken her to the doctor in the Stanmore 'a good few times' (also indicated from the notes of the GP). As the judge pointed out at paragraph 32 Dafina had not actually taken the grandmother to the doctor herself. Owing to the contrast in evidence, albeit both of the granddaughters were said to do 'shifts', the evidence undermined the extent of care claimed to be provided. Although the judge expresses herself briefly these are clearly the conclusions reached. The statement of Jetesa outlines the illnesses and the difficulties the appellant has but does not detail the assistance given. Similarly, with the statement of Dafina

Zeqiraj. The judge carefully considered the evidence of the granddaughters. Mere disagreement about the weight to be accorded to the evidence, which is a matter for the judge, should not be characterised as an error of law, **Herrera v SSHD** [2018] EWCA Civ 412.

28. The judge's analysis of the care home evidence was set out from paragraphs 36 to 39. The judge specifically found at paragraph 38 that there were available options for care within Kosovo including at paragraph 38 finding that there were "23 licensed NGOs or other private care providers which exist according to the report, have not been explored by the family" and further "there is nothing before me to say that the care provided by either private care providers of NGOs would be insufficient to meet the needs of the appellant". That was not challenged.

29. The judge assessed the relationship between the appellant and her family in the UK and her findings are made throughout the decision and particularly at paragraphs 41 onwards. It was the judge who heard the oral evidence from the appellant and her grandchildren and assessed the evidence and the judge made the key and necessary findings in line with Article 8. The judge noted that when the grandmother first came the plan was "to only have their grandmother stay with them for a month and then return to Kosovo". The judge adequately reasoned that the relationship could continue as it had done hitherto and that the appellant had spent her entire life in Kosovo. Additionally, the appellant 'gave up the tenancy to her home in Kosovo at the same time as applying to remain'.

30. Nonetheless, at paragraph 42 it was quite clear that the judge accepted the appellant had family life with her family in the UK but weighing in the various relevant factors found that the refusal was not disproportionate. In relation to the ground of challenge on 'isolation' and technological incompetence, any failure to make specific reference is not an error of law. The judge found a paragraph 38 that there was no evidence that private care providers would be insufficient to meet her needs. That would inevitably include contact with care workers and facilitating contact. The judge adequately reasoned at paragraph 42, and against the background of the previous findings, that the appellant had lived all her life in Kosovo and was clearly culturally integrated there. The judge identified as she was obliged to do that the appellant does not speak English and 'the family could have the same level of contact as they did before'. The health conditions were evidently pre-existing and the appellant had received extensive medical care in Kosovo indeed the report of Dr Balendra records a "complex past medical history" and "a background of the following medical conditions" which included ascending thoracic aortic aneurysm. Specifically, the judge found with regard to the appellant,

> "She is not an outsider in Kosovo, her entire life has been spent there and she can be supported in remaining there by her family, with the benefit of available private care facilities…".

Although there is a legal duty to give a brief explanation of the conclusions on the central issue on which an appeal is determined, those reasons need not be extensive if the decision as a whole makes sense, having regard to the material accepted by the judge, **Shizad (sufficiency of reasons: set aside)** [2013] UKUT 00085 (IAC)

31. **UT (Sri Lanka) [2019] EWCA Civ 1095** warns that mere disagreement with a decision of the First-tier Tribunal should not be characterised as an error of law. At paragraph 26 the following is set out

> "…In *R (Jones) v First Tier Tribunal and Criminal Injuries Compensation Authority* [2013] UKSC 19, Lord Hope said (at paragraph 25):
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> > "It is well established, as an aspect of tribunal law and practice, that judicial restraint should be exercised when the reasons that a tribunal gives for its decision are being examined. The appellate court should not assume too readily that the tribunal misdirected itself just because not every step in its reasoning is fully set out in it.""

32. The decision shows no material error of law and the decision shall stand. The appeal of Mrs Vitia remains dismissed.

Signed Helen Rimington Date 16th November 2020
Upper Tribunal Judge Rimington