



IAC-AH-SC-V1

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

Appeal Number: HU/24735/2018

THE IMMIGRATION ACTS

**Heard at Field House
On 28 February 2020**

**Decision & Reasons Promulgated
On 23 April 2020**

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

**MRS HABIBA JUMA KHAN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Mohzam, Solicitor, Twinwood Law Practice

For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of Afghanistan whose application for entry clearance to join her son (“the sponsor”) in the UK as an adult dependent relative was refused by the respondent.
2. The respondent gave four reasons for refusing the application.
 - (i) First, the appellant had not complied with the requirement to present a valid medical certificate confirming that she had undergone screening for active pulmonary tuberculosis and that she is free from the disease.

- (ii) Second, it was not accepted that the appellant satisfied the conditions of paragraph E-ECDR.2.4 of Appendix FM which requires that she must “as a result of age, illness or disability require long-term personal care to perform everyday tasks”.
 - (iii) Third, it was not accepted that the appellant, as required by E-ECDR.2.5, was unable, even with the practical and financial help of the sponsor, to obtain the required level of care in Afghanistan.
 - (iv) Fourth, it was not accepted that there were exceptional circumstances which would render refusal a breach of Article 8 ECHR because of unjustifiably harsh consequences for her and her family.
3. The appellant appealed to the First-tier Tribunal where her appeal was heard by Judge of the First-tier Tribunal Chapman (“the judge”). In a decision promulgated on 8 July 2019 the judge dismissed the appeal.

Decision of the First-tier Tribunal

4. As well as the oral and written evidence of the sponsor, the judge had regard to the following evidence.
- (i) A letter from a neighbour of the appellant stating that he and his wife have been assisting her but are planning to move house and therefore will not be able to continue doing so.
 - (ii) A letter from a hospital in Afghanistan dated 9 April 2019 stating that the appellant travels to India for medication for asthma and arthritis.
 - (iii) Notes dated 18 and 19 September 2017 from an Indian hospital concerning the appellant’s osteoarthritis and chronic bronchitis.
 - (iv) Records showing travel of the appellant and the sponsor to Tehran in 2018 as well as money transfers from the sponsor to the appellant.
5. At paragraph 41 of the decision, when considering the evidence of the sponsor, the judge stated:
- “The sponsor’s strong feeling that the Appellant should be allowed to join him in the United Kingdom is, I find, a ‘two-edged sword’ when assessing his evidence because what he says is most likely to come from a very subjective and emotional desire to achieve the outcome he wants, rather than being independent and objective. For this reason, I find that I must treat with caution the sponsor’s evidence, or any evidence produced by or through him, when it comes to assessing the Appellant’s care needs, or what care is available to her in Afghanistan.”
6. At paragraph 50 the judge went on to say:
- “Due to the fact that I cannot rely on the sponsor’s evidence or the letter from [the appellant’s neighbour], I cannot accept that the

neighbour is moving away from the Appellant. I cannot accept that there is no treatment for her medical conditions in Kabul.”

7. The judge found that the evidence did not establish that the appellant requires long-term personal care to perform everyday tasks and therefore that the conditions of E-ECDR 2.4 were not satisfied. The judge stated that the medical letter dated June 2019 was unclear and poorly translated. The judge also observed that the sponsor’s evidence had been that there was no treatment available to the appellant in Kabul but this letter came from a medical practitioner in Kabul.
8. In respect of the medical evidence from India dated September 2017, the judge found that this was several years old and did not demonstrate that the appellant now requires help with daily care needs. The judge found that the appellant had been able to travel to India on several occasions.
9. At paragraph 47 the judge stated:

“Having spent 3 weeks together [in Tehran in 2018] I would have expected the sponsor to be able to describe in some detail the appellant’s disabilities and her personal care needs including the everyday tasks she had to be helped with. Yet he has not done so, either in his statement or in his oral evidence. I asked him to describe his mother to me. All he could say was: *“she’s ill. She needs a stick to walk”*. This was not, in my view, the descriptions of a person with a significant disability or significant care needs.”
10. Having concluded that the burden had not been discharged to show that the appellant requires long-term personal care to perform everyday tasks as required by E-ECDR 2.4, the judge found that it was not necessary to consider E-ECDR.2.5 (although she made several observations indicating that she did not consider the conditions of E-ECDR.2.5 were met).
11. With respect to whether refusing entry clearance would be contrary to Article 8 ECHR, the judge found that the public interest in health and wellbeing of the population of the UK was engaged because the appellant had not shown that she does not suffer from TB. The judge also concluded that she was not satisfied that refusal of entry would cause a significant interference with the family life enjoyed between the appellant and sponsor as they would be able to continue communicating as they have done in the past.

Grounds of Appeal and Submissions

12. The first ground of appeal takes issue with the approach taken to the evidence of the sponsor, as set out in paragraphs 41 and 50 of the decision (quoted above at paragraphs 5 and 6). The contention made in the grounds is that the judge erred by rejecting the entirety of the sponsor’s evidence, as well as evidence obtained by the sponsor to support the appeal, merely because the sponsor has a subjective and emotional desire to succeed in the appeal, which is inevitably true of any appellant or sponsor in a case.

13. Mr Mohzam, in his submissions, developed this argument, stating that paragraph 41 of the decision indicates that there has not been a proper evaluation of the sponsor's evidence. He drew attention to paragraph 7 of the sponsor's witness statement where he stated:

"My mother is precious to me and lately her old age had taken a toll on her health. My mother is not as mobile as she used to be. She suffers from asthma and arthritis, she is in chronic pain when her arthritis flares up. She finds it difficult to care for herself and further she finds tasks like combing her hair difficult to do in being able to perform hygiene duties unaided. The arthritis has crimping effects on her."
14. Mr Mohzam argued that there was a necessity to address these points and the judge failed to do so, instead making an unwarranted criticism of the sponsor's evidence merely on the basis of his strong desire to bring his mother to the UK.
15. The second ground of appeal argues that the judge erred by failing to place any weight or reliance on the letter from the appellant's neighbour. At paragraph 43 the judge stated:

"The letter from [the neighbour] appears to be signed by a thumbprint, which suggests that [the neighbour] could not have written the letter personally and that the words used are those of someone else, most probably, in my view, those of the sponsor. I find that I can place very little weight or reliance on this document"
16. The grounds contend that there was no evidence that the neighbour did not write the letter personally and as a matter of fairness this ought to have been put to the sponsor at the hearing to enable any clarifications to be made.
17. The judge at paragraph 46 commented that he found it difficult to accept that the appellant's neighbour had brought her to India for medical treatment, stating that "I find it difficult to accept that her neighbour would spend so long with her in another country". The grounds submit that the sponsor ought to have had an opportunity to address this concern and there was, in any event, no reasoning to support this conclusion.
18. The final paragraph of the grounds of appeal state:

"Whilst it is accepted that the absence of a TB certificate was fatal to the appellant's application and appeal, it is submitted that adequate and reasoned findings on the remainder of the appeal were essential."
19. Mr Mohzam stated that he was resiling from this concession and submitted that the appellant would be able to obtain the TB certificate after the appeal is allowed. He acknowledged however that it could not be said that the appellant satisfies the requirements of Appendix FM given the absence of a TB certificate.
20. Mr Lindsay argued that the appeal cannot succeed because of the absence of a TB certificate. This is required under the Immigration Rules; and if the

appellant cannot meet the Immigration Rules her appeal cannot succeed because there is no basis for finding, in accordance with GEN.3.2, that there are exceptional circumstances that would render refusal of entry clearance a breach of Article 8 ECHR because it would result in unjustifiably harsh consequences. In respect of paragraphs E-ECDR.2.4 and 2.5 of Appendix FM, Mr Lindsay's view was that adequate reasons had been given for finding that the conditions of these requirements were not satisfied.

Analysis

21. Whilst paragraph 41 of the decision, read together with paragraph 50, might give the impression that the judge rejected the appellant's case because the evidence of (and obtained by) the sponsor was in some sense tainted due to his desire to bring the appellant to the UK, reading the decision as a whole (and having regard to the evidence underpinning the decision) it is clear that this is not in fact why the appeal was dismissed, as there were other - sustainable - reasons why the judge did not accept that the appellant's care needs met the threshold of E-ECDR 2.4.
22. There was a very limited amount of medical evidence before the judge; and the evidence that was adduced lacked any detail and fell significantly short of demonstrating that the appellant could not perform day to day tasks. In the absence of medical evidence, the appellant's case depended on the evidence of the sponsor and her neighbour.
23. The judge gave a clear and sustainable reason for not placing weight on the evidence of the neighbour, which was that his letter was "signed" by thumbprint, indicating illiteracy and suggesting that the letter was written by somebody else. Given the absence of a statement by the neighbour to the effect that the letter had been read to him, the judge was entitled to treat it with scepticism. Moreover, the neighbour's letter is extremely brief and provides no detail about the nature and extent of the personal care she requires.
24. With respect to the sponsor's evidence, the judge explained at paragraph 47 that his description (at the hearing) of the appellant did not point to there being significant care needs and lacked any detail. Mr Mohzam drew attention to the sponsor's witness statement but this, like the oral evidence, provided very little detail about the care needs of the appellant. Paragraph 7 of the sponsor's witness statement (quoted above), which Mr Mohzam referred to at the hearing, only states that she finds caring for herself difficult - not impossible; and the only concrete example given is that she finds combing her hair difficult.
25. It was for the appellant to show, through evidence, that she was unable to perform everyday tasks without personal care. The evidence did not show this and therefore the judge was clearly entitled to conclude that the requirements for entry clearance as an adult dependent relative were not satisfied.

26. Having found that E-ECDR 2.4 was not satisfied, it was not necessary for the judge to assess E-ECDR.2.5.
27. For the appellant to succeed outside the Immigration Rules, there would need to be compelling circumstances. Based on the evidence before the First-tier Tribunal, the judge was clearly entitled to conclude that there were no such compelling circumstances.

Notice of Decision

28. The grounds of appeal do not identify a material error of law. The appeal is therefore dismissed.

Signed

A handwritten signature, appearing to be 'SH', is written in black ink to the left of a rectangular box. The box is empty and likely intended for a printed name or title.

Upper Tribunal Judge Sheridan

Dated: 25 March 2020