



**Upper Tribunal**

**(Immigration and Asylum Chamber) Appeal Numbers: UI-2022-001355  
HU/02067/2021**

**THE IMMIGRATION ACTS**

**Heard at Field House  
On the 17 August 2022**

**Decision & Reasons Promulgated  
On the 11 October 2022**

**Before**

**UPPER TRIBUNAL JUDGE PITT**

**Between**

**TAMARA MARKUSHEVSKA  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellant: Ms C Bayati, Counsel instructed by Kadmos Consultants  
For the Respondent: Ms Ahmed, Senior Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal against the decision issued on 4 January 2022 of First-tier Tribunal Judge I Ross which refused the appellant's appeal brought on Article 8 ECHR grounds.
2. In March 2022 the appellant was able to enter the UK under the Ukraine Family Scheme and currently has discretionary leave to remain for three years. She pursues this appeal where there is agreement that the timing of her application to the First-tier and the Upper Tribunal mean that it is not abandoned.

3. The background to this matter is that on 3 December 2019 the appellant applied for entry clearance to come to the UK as an Adult Dependent Relative (ADR) of her daughter. The application was refused on 30 September 2021. The Entry Clearance Officer did not accept that the appellant required long-term care to perform everyday tasks and did not accept, even if that care was required, that it was not available to her in Ukraine. The respondent therefore found that paragraphs E-ECDR.2.4. and E-ECDR.2.5. of Appendix FM the Immigration Rules were not met. The respondent also found that the decision did not breach the appellants' rights under Article 8 ECHR.

4. Paragraphs E-ECDR.2.4. and E-ECDR.2.5. of Appendix FM provide:

E-ECDR.2.4. The applicant or, if the applicant and their partner are the sponsor's parents or grandparents, the applicant's partner, must as a result of age, illness or disability require long-term personal care to perform everyday tasks.

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

5. The First-tier Tribunal also found that paragraphs E-ECDR.2.4. and E-ECDR.2.5. of Appendix FM the Immigration Rules were not met and that the respondent's decision did not breach the appellants' rights under Article 8 ECHR.

6. The appellant provided psychiatric reports from 2017 to September 2021 in support of her appeal. In paragraph 14 of the decision the First-tier Tribunal Judge concluded that the evidence did not show that the appellant required long-term personal care. This was because:

"The nature of the appellant's illness, which has been diagnosed as severe depression, may cause the appellant to have very low mood and lack of motivation leading to self-neglect, but does not prevent the appellant from being able to perform everyday tasks such as cooking, washing and bathing, toileting, dressing and undressing, communicating, going out, reading and budgeting."

7. In paragraphs 15 and 16 the judge stated:

"15. The extent of the medical evidence provided, and its contents, demonstrates that adequate care for the appellant's medical condition is available in Ukraine. There has not been any problem with the appellant being able to access treatment in Ukraine and being

prescribed the appropriate medication. Further, the nature of the appellant's medical condition is also that she can be stable for long periods without suffering acute episodes. Her last hospitalisation was in September this year when she was discharged after a ten day period.

16. Whilst I understand and sympathise with the sponsor's wish for the appellant to be looked after by her in the UK, there is a high threshold which can only be satisfied by medical evidence that she requires long term personal care to perform everyday tasks. The appellant, whilst suffering from depression, can look after herself and perform everyday tasks. Moreover, it is accepted that the appellant is physically able to travel to the UK and USA to visit her daughters and there is no financial problem in her doing so."

8. In paragraph 17 the Judge set out that the requirements of E-ECDR.2.5 were not met. This was because:

"... there is an absence of evidence as to what care is available in Ukraine and how much it would cost, i.e., whether the care required by the appellant could 'reasonably' be provided in Ukraine. There is reference in the psychiatric report that inpatient treatment is available if required. Further, the mandatory requirements of Appendix FM-SE para 35 have not been complied with. 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 should be from a central local health authority, a local authority or a doctor or other health professional."

9. The appellant's grounds of appeal maintained that the First-tier Tribunal erred in reaching both of these conclusions. The First-tier Tribunal had been provided with psychiatric reports from 2017 onwards setting out the appellant's difficulties. A report dated 3 March 2017 identified the diagnosis of severe depression, anxiety, anhedonia and loneliness. The appellant was recommended for pharmacological and psychotherapeutic treatment. The cause of her illness was identified as being her children leaving Ukraine and being made redundant from her position as a doctor.

10. In a psychiatric report dated 7 September 2017 the psychiatrist commented on the appellant's symptoms as follows:

"Tearfulness and low mood

Excessive somnolence at daytimes, but disturbed sleep during the night

Extremely low energy levels, low self-esteem and poor motivation

Self-neglect as well as neglecting her daily tasks and basic house duties (cleaning, washing clothes and washing up)

Lack of appetite and weight loss

Feeling of helplessness, hopelessness and feelings of her life being not worth living due to being alone with no family near and not needed by anyone".

11. Similar views were set out in a psychiatric report dated 12 July 2018. A temporary improvement due to having seen one of her daughters was followed by a deterioration with “reduced energy levels, sadness and reduced motivation all aligned to her original symptoms”. A psychiatric report dated 15 August 2019 also identified an improvement because of contact with one of her daughters but a decline to the original symptoms when that period of contact ended. The psychiatrist identified that:

“Direct family interaction is making a significant impact on overall wellbeing leading to a significant improvement in symptoms.”

12. A psychiatric report dated 18 October 2019 stated:

“Despite regular psychiatrist follow-up, adjustment of medication dose, individual and group psychotherapy it appears closer family contact is the one key factor that has made a positive impact on Tamara’s wellbeing and improved her condition. On two occasions of her travelling to visit her daughters abroad it led to a significant improvement of her symptoms and psycho-emotional condition after close-knit interaction with her immediate family. Apart from depression, Tamara is not suffering from any other medical conditions. Deterioration of Tamara’s mental health as described is raising the risk of further deterioration of physical health, self-neglect and putting her safety at risk, especially because she lives alone. She needs psychological support, monitoring of mental health and support for day-to-day tasks to prevent self-neglect and decline in physical health.”

13. A report dated 30 November 2020 followed a visit by a psychiatrist to the appellant’s home. The psychiatrist found the appellant in bed in the afternoon wearing dirty nightclothes and observed that she did not appear to be washing. She indicated:

“The house was in a poor state of keeping, I witnessed several piles of unwashed clothes and the kitchen was in a very poor state of cleanliness and hygiene (unwashed dishes, cups, cutlery etc.). When I saw the bedroom I was amazed to see further unwashed and forgotten dishes on the floor around the bed, I even saw some mould growing on some leftover food. I offered to make a cup of tea, but there was no tea or coffee in the house and the fridge had what looked like very old out of date food – that was starting to smell.”

I tried to ask when Tamara last went shopping for groceries but she only replied with the fact that she could not remember. I could see that she has not shopped for essentials for a long time I could not be sure she even ate regular meals. I was very concerned to see unopened prescription medication boxes dated 16<sup>th</sup> of September, which made me think of her not taking medications that were prescribed either.”

The psychiatrist concluded that there was a “serious risk of suicide, significant self-neglect, recurrence of severe depressive symptoms, breakdown and lack of social support”.

14. A psychiatric report dated 29 March 2021 set out that the appellant was taken to hospital by ambulance following “intense thoughts of suicide and

low mood.” The appellant was finding it difficult to cope and had not eaten for four days and was severely dehydrated. She did not have the motivation to buy tea or coffee or make those drinks even if they were made available to her. The summary in the same report indicated:

“Tamara has described psychosocial stressors (loss of the husband, loss of job, emigration of both daughters abroad as well as inability to reunite with her family) which have clearly impacted on her mood, energy levels, sleeping pattern and as a result on day-to-day living. There appears to be a loss of purpose of life which has led to Tamara’s having no form or structure to her day. She is clearly finding it very challenging to keep with reality and cannot see any way out or future overall. Tamara has described some suicidal thoughts involving her jumping into a river which is near where she lives. It is worth noting that Tamara’s demographics do fall within the high-risk category. As a means of moving forward, it is felt that at this point Tamara appears to be in an acute crisis and I feel she would benefit from psychiatric interventions. Tamara has no close relatives or family around to take care of her, support with the daily activities, engage with the home treatment and make an overall difference to her wellbeing. Talking to Tamara today she is in agreement to be admitted to hospital.”

The psychiatrist also set out:

“Tamara requires further support and encouragement with personal care, washing, dressing, bed routine, regular food and drink intake and medication therapy to prevent further deterioration of the mental and physical condition. This will be available for the time of her stay in hospital, but is not available in the community. The long-term solution if it can be arranged is closer family interaction and the support family can provide.”

15. Having considered the materials provided by the appellant, it was my conclusion that the judge’s findings in paragraphs 14 to 17 of the decision were in error. The finding that the appellant did not require long-term personal care to perform everyday tasks was based on whether she had the physical capability to look after herself. The extracts from the psychiatric reports set out above indicate that she was not able to care for herself because of her mental illness, not because of physical health problems. The decision does not address this material at all. It had the potential to lead to a different outcome as to whether the appellant met paragraph E-ECDR.2.4. of Appendix FM.
16. Further, the psychiatric reports also indicated that contact with the appellant’s family was the “key factor” in the support she needed and that the “long-term solution if it can be arranged is closer family interaction and the support family can provide.” This was not a case where the medical evidence showed clearly that care from a third party was capable of addressing the appellant’s mental disorder and negative symptoms of severe self-neglect and suicidality. The reports indicated that separation from her family was a significant cause of her illness and that personal care from and direct contact with her family were an important part of any recovery. The First-tier Tribunal pointed out in paragraph 16, quoting from Ribeli v ECO, Pretoria [2018] EWCA Civ 611, that the assessment of the

availability of the support that was required should include issues of an “emotional and psychological” nature if “verified by expert medical evidence”. The decision of the First-tier Tribunal here did not address this aspect of the appellant’s difficulties and it was therefore my judgment that the First-tier Tribunal also erred in the assessment of whether the appellant met the provisions of paragraph E-ECDR.2.5. of Appendix FM.

17. It was my conclusion that both of these errors were material as a different outcome might have been reached had they not been made. That also undermined the decision that there was no breach of Article 8 ECHR. It was therefore my view that the decision of the First-tier Tribunal had to be set aside to be remade.
18. I canvassed the views of the parties on the appropriate disposal in the event of an error of law. Both the appellant and respondent were of the view that a further hearing was required and it was my conclusion that as there were no preserved findings and the key assessments had to be conducted again, it was appropriate for the matter to be remade in the First-tier Tribunal.

### **Decision**

19. The decision of the First-tier Tribunal discloses an error on a point of law and is set aside to be remade.
20. The appeal will be remade in the First-tier Tribunal de novo.

Signed: S Pitt  
Upper Tribunal Judge Pitt

Date: 2 September 2022