IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-004976
First-tier Tribunal No: HU/00312/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 30 March 2023

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

NEELAM RAHI
(NO ANONYMITY ORDER MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the Appellant: Mrs U Sood, Counsel, instructed by Direct Access
For the Respondent: Mr C Avery, Senior Presenting Officer

Heard at Field House on 27 January 2023

DECISION AND REASONS

Introduction

1. The Appellant appeals against the decision of First-tier Tribunal Judge Beg ("the judge") promulgated on 6 July 2022. By that decision the judge dismissed the Appellant's appeal against the Respondent's refusal of her human rights claim (a claim made in the context of an application for entry clearance).

2. The Appellant is a citizen of India born in May 1940. Her two children live in the United Kingdom. Mr Rohit Rahi (the first Sponsor) is an Associate Professor of Economics at the London School of Economics. Mrs Vandana Jackson (the second Sponsor) holds a senior position in the ambulance service in Cornwall. The first Sponsor is married to Ms Zhou. Their adult son lives in Mexico. The second

Sponsor is married. She has two adult children from a previous relationship and they reside in India. The Appellant has two elderly sisters who also reside in that country.

3. Between 1999 and 2019, the Appellant made a number of visits to the United Kingdom, the last of these being in or around April 2019. She subsequently returned to India. The human rights claim which was the subject of appeal to the judge was made on 5 November 2021. The application was based on the Appellant's numerous medical conditions, together with cognitive, mental health, and emotional needs and the claim that she required care from her children in the United Kingdom. The claim was refused by a decision dated 30 December 2021. The Respondent had considered the claim within the context of the relevant Immigration Rules, specifically Appendix FM Section E-ECDR.2.1 – 2.5. The Respondent concluded that the evidence did not demonstrate that long-term personal care needs could not be provided for in India. The Respondent also considered whether there were any exceptional circumstances, but concluded that there were not.

The judge's decision

4. The judge addressed a wide variety of issues and evidence arising in the appeal. The first of these related to the reception of evidence from overseas. Shortly before the hearing, the second Sponsor had travelled to India to be with the Appellant. At the hearing Mrs Sood apparently made a request that the second Sponsor should be permitted to give evidence remotely from that country. Having considered the request, the judge declined it, seemingly in light of the guidance set out in Agbabiaka (evidence from abroad; Nare guidance) Nigeria [2021] UKUT 00286 (IAC), which had been published on 26 October 2021. This made it clear that in the absence of express permission from the authorities of the country in question, the reception of evidence from their territory could potentially lead to a negative impact on diplomatic relations. It was said that relevant attempts should be made to obtain such express permission. In the present case, no such enquires had been made.

5. Following the judge's refusal of the request there was no application to adjourn the proceedings in order to make relevant enquiries, or for the case to be relisted after the second Sponsor had returned from India.

6. The judge then moved on to direct herself that she would be considering the evidence and issues firstly in light of the provisions under Appendix FM and then under Article 8 on a wider basis. She made reference to expert evidence from three sources (Dr Gupta, Dr Bagga, and Mrs Davison, a senior nursing and social care professional). The judge recorded relevant aspects of the first Sponsor's oral evidence relating to his and his sister's interaction with the Appellant, the ability to fund relevant medical care in India, and the fact that he had not, at that point, enquired about a private carer who might be able to look after the Appellant within her own home. He had stated that he did not wish to place the Appellant in residential care.

7. The judge addressed the issue of physical care needs and then went on to discuss the emotional aspect of the Appellant's needs. The judge found that the essential day-to-day care for the Appellant were she to reside in the United Kingdom would be undertaken by the first Sponsor's wife because the intention was that the Appellant would reside in London and not with the second Sponsor in Cornwall. The judge made specific reference to the Respondent's guidance on adult

dependent relatives. She considered the position of the Appellant's two grandchildren and sisters residing in India and concluded that they were in a position to offer meaningful assistance, both practically and on an emotional level. The composite conclusion on the core issue in the appeal was stated at [39]:

> "However for all the reasons that I have stated, I find that the appellant has access to the required level of care in India with financial support from the sponsor in the United Kingdom. I find that her emotional and psychological needs are met through the frequency of contact with her by her adult children and other relatives in India."

8. In light of this, the judge concluded that the Appellant was unable to satisfy the requirements of Appendix FM.

9. The judge then went on in the alternative to consider Article 8 on wider basis. She found family life to exist as between the Appellant and the two Sponsors, but concluded that, essentially in light of what had been said previously, the Respondent's decision was proportionate.

10. The appeal was accordingly dismissed.

The grounds of appeal

11. There are two sets of grounds: Those put forward to the First-tier Tribunal and those in the renewed application made to the Upper Tribunal. Here I summarise them as a whole. It is said that:

    (a) The judge should have considered adjourning the appeal of her own volition in order that the second Sponsor could give oral evidence.

    (b) The judge failed to make relevant findings on the expert evidence.

    (c) The judge failed to give adequate reasons in respect of the Appellant's overall care needs.

    (d) The judge reached "irrational and perverse" conclusions on the evidence before her.

    (e) There had been "a lack of proper judicial evaluation" of the expert evidence.

    (f) The judge had failed to address the Respondent's guidance on adult dependent relatives adequately.

12. The First-tier Tribunal refused permission in a decision containing relatively detailed reasons. On renewal, permission was granted by the Upper Tribunal.

13. Following the grant of permission, the Respondent provided a detailed rule 24 response, dated 17 January 2023.

14. Thereafter, the Appellant provided a skeleton argument, dated 25 January 2023. In certain respects, the skeleton argument sought to add to the grounds of appeal. However, there has been application to amend the grounds and I will not consider any substantive challenges set out in the skeleton argument which do not appear in any form within the grounds.

The hearing

15. Mrs Sood relied on the grounds of appeal and her skeleton argument. She confirmed that no reliance was being placed on Article 3, nor was the Appellant asking for a litigation friend to be appointed. She accepted that no record of the oral evidence given before the judge had been provided before or after the grant of permission.

16. Mrs Sood essentially followed the grounds of appeal and provided responses to the rule 24 document.

17. Mr Avery submitted that the challenge amounted to nothing more than a disagreement with the judge's findings. The judge had taken account of all the relevant evidence, had weighed it all up, and had reached conclusions which were open to her.

18. At the end of the hearing I reserved my decision.

Discussion

19. Before turning to the substance of the Appellant's challenge, I remind myself of the need for appropriate restraint before interfering with a decision of the First-tier Tribunal, in keeping with a number of pronouncements to this effect by the Court of Appeal over recent years. I remind myself that there is no requirement for reasons for reasons, that weight is a matter for the fact-finding tribunal, and that in respect of a perversity challenge, an elevated threshold applies.

20. It is important to note that the judge in this case, as in many others, had considered evidence from a variety of sources, both documentary and through testimony. It was her task, as she made clear, to consider the evidence as a whole and apply it to the relevant legal framework. In respect of the latter, I am entirely satisfied that there were no misdirection in law as regards that framework and indeed no such challenge has been put forward. The judge was clearly entitled to consider the Appellant's case within the context of Append FM in the first instance. A satisfaction of those provisions would have almost invariably have led to a successful outcome for the Appellant. Conversely, a failure to satisfy the provisions was a weighty consideration against her: see, for example, Agyarko v SSHD [2017] UKSC 11; [2017] Imm AR 764, at paragraph 47. The judge was then correct, indeed obliged, to go on and consider Article 8 in its wider context.

21. With this in mind, I turn to the substance of the arguments put forward on the Appellant's behalf.

The expert evidence

22. It is obvious that Appellant had accumulated a good deal of evidence in preparation for her appeal, important aspects of which were the three expert reports already referred to. It is undoubtedly the case that the judge was fully aware of this evidence and had considered it. At [12] she described the existence of "substantial medical evidence" and thereafter she specifically addressed each of the three reports. There was no requirement for the judge to set out the contents of these reports in particular detail. I note that the judge did not confine herself to a consideration of what the expert said about the Appellant's physical needs, but also referred to the emotional and mental health aspects: [14], [15], [16] and [19].

23. I do not read the judge's decision as expressly rejecting or disbelieving the expert evidence. Her task, however, was to consider the evidence "in the round" and that included other sources which the experts may not have taken into account, or may not of course have been aware of (for example, oral evidence or information contained within witness statements).

24. Having reviewed the expert reports, I cannot see any reference to the requirement for the Appellant to receive round the clock care and the judge was entitled to take into account and reach findings on evidence concerning the availability of private carers at her home and interaction with the Sponsors, her grandchildren and her sisters (I will return to this evidence in due course). The judge had noted the fact that the first Sponsor had not made enquires concerning the availability of private care, but she was clearly entitled to find that this was a possibility both in theory and practice.

The nature of the care required by the Appellant

25. The judge was not required to deal with each and every aspect of the specific care needs of the Appellant, as described in either the expert reports or witness statements. As I have mentioned already, I am satisfied that she was well-aware of the contents of the evidence. I am satisfied that she had relevant matters in mind when setting out her analysis and findings.

Support from relatives

26. One aspect of the Appellant's challenge relates to the possibility of her grandchildren and sisters providing support in India. The Sponsors were of the view that relevant support would not be available from these sources and they were entitled to adopt that position. However, it is a fact that there were no witness statements from the grandchildren or the sisters. There was nothing positive from them to say that they could not or would not provide any form of support whatsoever. Whilst the lack of such support was not specifically raised by the Respondent prior to the hearing, this did not preclude the judge from considering the point for herself. It was, frankly, a fairly obvious issue going to the potential provision of care in India itself. The judge was entitled to draw reasonable inferences from the absence of any positive evidence from the sources and was entitled in turn to conclude that the two grandchildren had visited the Appellant "about once a month" and would continue to do so. Further, she was entitled to find that the two sisters, whilst elderly, could provide moral support, if not other practical support. The absence of cross-examination of the first Sponsor on this point at the hearing does not render the judge's analysis unlawful.

Evidence from overseas

27. Mrs Sood had been aware of the second Sponsor's absence from the United Kingdom shortly prior to the hearing before the judge. She could have, but did not, seek an adjournment. I understand that this was on the basis of instructions. That being the case, a conscious decision was taken to proceed in the absence of any oral evidence from the second Sponsor. That was a matter for the Appellant and her family. In light of what was said in Agbabiaka, the judge was perfectly within her rights to refuse the request to receive oral evidence from India. I have taken account of the very recent judgment of the Court of Appeal of Raza v SSHD [2023] EWCA Civ 29. There, it is said that taking evidence from abroad without the express permission of the authorities of that country does not render a

hearing unlawful or a nullity. That does not, in my judgment, lead to a conclusion that the judge in this case erred in law and I find that there was no error.

28. Even if she was wrong to have refused the request to receive the second Sponsor's oral evidence from India, I am satisfied that it could not have made any material difference to the outcome. Mrs Sood was unable to identify any additional significant evidence over and above what had already been said in the witness statements (in respect of which the judge was clearly aware and had taken into account).

The rule 24 response

29. I accept that one or two of the points raised in the document are of no consequence. Having said that, the Respondent is right to note that there was no witness statement from the first Sponsor's wife as to any particular emotional connection between her and the Appellant, given that the first Sponsor's wife had been married to him only since 2019. This ties in to the considerations taken into account by the judge at [34] and [35]. She was entitled to conclude that the great majority of the proposed care for the Appellant would fall on the shoulders of the first Sponsor's wife, given his work commitments.

30. As to an alleged failure by the judge to find whether or not this was a "terminal" case, it appears as thought there was only a single reference to the term "terminal" in the expert evidence. It appears to me as though this related to the Appellant's diagnosis of cancer, in respect of which she is now in remission. There is nothing to suggest a terminal diagnosis and in any event, I am satisfied that no legally relevant submission on this point was ever made to the judge.

Conclusions

31. Having regard to the above, and reading the judge's decision sensibly and holistically, there are no material errors of law.

32. The findings made and conclusions reached were open to the judge on the evidence and in light of the applicable legal framework. The judge was entitled to conclude that the Appellant could not meet the requirements of Appendix FM. That, in turn, constituted a significant factor when considering Article 8 in its wider context. Whilst the proportionality assessment was relatively brief in nature, it is clear that it was predicated on everything which preceded it. The judge took all relevant matters into account and left none out of account. She provided legally adequate reasons for her findings and overall conclusions. As part of her assessment she attributed weight to the relevant considerations and that exercise was a matter for her. As to the perversity challenge, the elevated threshold has clearly not met been met in this case.

33. It may of course be the case that another judge could have reached the opposite conclusion on the same evidence, but that it is not a question with which I am concerned.

Notice of decision

The decision of the First-tier Tribunal did not involve the making of errors of law.

That decision stands and the Appellant's appeal to the Upper Tribunal is dismissed.

H Norton-Taylor

Judge of the Upper Tribunal
Immigration and Asylum Chamber

20 February 2023