



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006172

First-tier Tribunal No: HU/00877/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 12 May 2023

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

NA
(ANONYMITY ORDER MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Unrepresented

For the Respondent: Mr C Avery, Senior Home Office Presenting Officer

Heard at Field House on 30 March 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (and/or other person). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The Appellant is a citizen of Syria. Her date of birth is 17 April 1962.
2. The Appellant was granted permission by the First-tier Tribunal (Judge Pickering) on 16 November 2022 to appeal against the decision of the First-tier Tribunal (Judge Khurram) to dismiss her appeal against the decision of the ECO on 23 December 2020 to refuse her application for entry clearance

under Article 8 ECHR.

3. The Appellant had made an application on 21 August 2020 under the immigration rules (IR) relating to family reunion to join her son (the Sponsor) in the UK on 21 August 2020. This was refused by the Respondent on the basis that the Appellant could not meet the requirements of the IR. She made another application on 5 April 2021 relying on the IR as they relate to adult dependent relatives. This was similarly refused. The applicant made a third application under Article 8 which was refused on 23 December 2020 giving rise to the appeal before the First-tier Tribunal.
4. The ECO considered the application under the IR relating to adult dependent relatives. The decision-maker was not satisfied that the Appellant met the requirements of E-ECDR.2.4. This requires that the applicant as a result of age, illness or disability requires long term personal care to perform everyday tasks. The decision-maker also found that the Appellant could not meet E-ECDR.2.5. which requires her to be unable, even with the practical and financial help of the Sponsor, to obtain the required level of care in Syria 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 ECO was of the opinion that the Appellant had failed to provide evidence to show that she would be unable, with the practical and financial help of the Sponsor, to obtain the required level of care in Syria. The ECO was not satisfied that the Appellant could meet the eligibility financial requirements. They were not satisfied that, in accordance with E-ECDR.3.1., the Appellant had provided evidence to confirm that the Sponsor can and will adequately maintain her without recourse to public funds. The decision-maker was not satisfied that the Appellant could meet E-ECDR.3.2. because she had not provided an undertaking signed by the Sponsor confirming that she would have no recourse to public funds and that he would be responsible for their maintenance, accommodation and care for a period of five years from the date the applicant entered the UK.
6. The ECO went on to consider exceptional circumstances/unjustifiably harsh consequences with reference to GEN.3.1. and GEN.3.2. and GEN.3.3. The decision-maker took into account that the Appellant raised concerns about being an elderly lone female in Syria, however it was decided that she could not meet the high threshold. It was noted that she has two adult daughters residing in Syria who could help her.
7. The Appellant appealed against the decision. The appeal came before Judge Khurram. Neither party was represented. The Sponsor attended the hearing which was conducted by way of a remote hearing by CVP.
8. The judge had before her the Appellant's bundle which contained a document entitled "Chronology of events", a medical report, a joint unsigned witness statement from the Appellants' sons and daughter-in-law and identity documents relating to relatives of the Appellant. The Sponsor is the Appellant's son, AAO, a Syrian national who has been granted LTR as a refugee in the United Kingdom.

9. The judge set out the legal framework at paragraphs 10–18. The judge referred herself to the case of Britcits v The Secretary of State for the Home Department [2017] EWCA Civ 368 and focused at paragraphs 14–16 on the IR and guidance relating to adult dependent relatives. At paragraph 17 the judge said that she would adopt the structure recommended by the Senior President of Tribunals in TZ (Pakistan) and PG (India) v The Secretary of State for the Home Department [2018] EWCA Civ 1109. She said that she must first consider whether the Appellant meets the requirements of the IR and that it is for the Appellant to demonstrate “on balance that any Rule she claims to meet, are met”. The relevant Rules that were considered by the judge were those relating to adult dependent relatives.
10. At paragraph 22 the judge recorded that the Sponsor had confirmed that he had considered the decision and understood it and that he would not be pursuing an appeal under the IR relating to adult dependent relatives. It was agreed that the issue was whether there were exceptional circumstances that would render the refusal decision to breach Article 8 of ECHR.
11. The judge set out the evidence of the Sponsor at paragraph 23, noting that he adopted the contents of the joint witness statement. The Sponsor confirmed in evidence that his father died in 1995, however at that time the Appellant did not want to leave Syria because he (the Sponsor) remained there and she did not want to leave him. The Sponsor came to the United Kingdom in 2018. He has two brothers who reside in the UK. He has a sister who lives in Saudi Arabia, an uncle who lives in Greece and another uncle who lives in Cyprus.
12. The Sponsor confirmed that the Appellant was being cared for by a neighbour, however the neighbours have now fled because of deterioration of the political situation there and because the civil war has worsened. There was nobody there to care for the Appellant. The Sponsor confirmed that his two daughters had fled Syria and are in Lebanon. They were not able to produce any evidence relating to this because they were living illegally. One of them is hoping to come to the UK because her husband is here. The Sponsor’s brothers’ wives are also living in the UK. The Sponsor has set up a company here called Brent General Constructions Ltd. His children in the UK have not seen the Appellant (their grandmother) for about fourteen years. The Appellant “has lost everything”, she also has “very low self-esteem”.
13. The Sponsor has minor children in Syria residing with the Appellant. They have been granted a visa under the Rules relating to family reunion, however they cannot travel here because they cannot leave the Appellant.
14. The judge had before her a document which is entitled “Medical Report”. It is dated 3 August 2021 and written “To Whom It May Concern”. It concerns the Appellant who the author stated attended his clinic in relation to “her mental depression and anxiety of which her ill health and the circumstances she has been through have had great impact and devastating effect on her mental health”. The author states that the Appellant was previously assisted by her sons in Syria who have now fled fearing persecution. She wishes to join her sons in the UK, however she has been left by herself requiring mental healthcare and support. The author states that he was informed by the Appellant’s neighbours that her sons are in the UK and are extremely worried about the Appellant’s health. Her grandchildren’s application for entry clearance had been granted and this “has been of great impact on her mental health as she has had custody for the grandchildren since their

mother left them and since her son left Syria fearing his life". The author of the medical report states "I understand that the separation of her grandchildren is one of the main reasons for her mental depression after her family members left Syria and she has been having the role in the upbringing of her grandchildren and they are the only ones left for her in Syria". It is stated that the Appellant is suffering from severe mental depression, anxiety and panic attacks which the author of the report believes she has been suffering from for a substantial period of time.

15. The author states that:-

"I understand and through the sessions have become aware from her that she has strong ties and connection with her sons and mainly her grandchildren and does not understand why her sons abandoned her in Syria and are also taking her grandchildren away from her".

16. It is the author's opinion that the Appellant would be in great danger both physically and mentally and that she is "on the route of an extreme psychological collapse due to the lack of emotional support brought by the strength of ties and connection that she has been missing since being separated from her sons, grandchildren, and family".

17. In relation to the report the judge stated at paragraph 32 that the identity of the author was not clear. It was not clear what qualifications they have or the material basis of their diagnosis. The judge found that the report did not detail the lengthy mental health which was referred to or treatment received thus far and/or proposed ongoing treatment. The judge found that it was unclear from the report whether the Appellant requires long term personal care to perform everyday tasks, as a result of age, illness or disability. The judge concluded as follows:-

"I am mindful that the Sponsor states at paragraph 11 of his witness statement that the Appellant is unable to deal with her daily needs due to ill health and requires assistance and care daily. However, without further elaboration and corroborating evidence I am not satisfied that the burden of proof in this regard has been met".

18. In relation to the report the judge stated as follows:-

"33. It is implicit in the report that the Appellant will benefit from being cared for by the Sponsor and her family. However, in my view this is not relevant to the question of whether the Appellant currently needs long-term care to perform everyday tasks. I would need to see evidence that, for example, the Appellant is unable to carry out, without assistance, basic tasks such as bathing, dressing, feeding herself, using the toilet, getting in and out of bed and shopping. Matters relating to her emotional and psychological welfare would be relevant insofar as they relate to who is best placed to assist her with such tasks.

34. Given my finding that she does not need such assistance, I do not go on to consider the other aspects of the Immigration Rules that are in dispute".

19. The judge under the heading of "Family Life" directed herself in relation to

Kugathas v SSHD [2002] INLR, Ghising [2012] UKUT 160 and Singh [2015] EWCA Civ 630. The judge found at paragraph 36 that the Appellant does not enjoy family life with the Sponsor. She had no doubt that the Sponsor cares a great deal about her but the judge found that:-

“The evidence does not demonstrate more than the normal emotional ties between an ageing parent and an adult child. There is no evidence of financial dependence and, the element of emotional dependency or committed support needed for the existence of family life within the meaning of Article 8 is not in evidence in this case”.

20. The judge took into account that the Sponsor had resided in a different country to the Appellant since 2018 and found that there “is no material evidence of the level and frequency of contact between them”. The judge found that there was no evidence of financial dependency upon the Sponsor. The judge took into account other sources of support, namely grandchildren (the Sponsor’s minor children) to whom the judge stated the Appellant was close.
21. The judge did not accept the Sponsor’s evidence that his two sisters were in Lebanon because there was no evidence supporting this. The judge accepted that there may be difficulties in obtaining such evidence, however concluded that “without further details it is difficult to make any finding on this point” (see paragraph 38).
22. The judge concluded that:-

“The Appellant has been comprehensively assisted by her neighbours and friends. I find there is no basis for finding that she does not have the usual support from social contacts. Furthermore, there is no suggestion or evidence that the Sponsor supports the Appellant for her basic living needs such as food, clothing and utilities”.

The judge went on to consider proportionality in the alternative that the Appellant has family life with her son. The judge stated the following at paragraph 42:-

“42. The spirit of best interests of the child considerations are relevant as per Section 55 of the Borders, Citizenship and Immigration Act 2009. In view of the Appellant potentially being separated from her grandchildren who are said to live with her. I have insufficient information and evidence relating to the Appellant’s grandchildren to make a conclusive finding, such as identity and living arrangement documentation. Certainly, the Sponsor’s evidence makes clear that his children have been granted leave to join him in the UK. This would be the usual starting point, although I do not have evidence relating to the children’s mother or her current place of residence. I find so far as the available evidence before me allows, bearing in mind the current situation in Syria that the children’s best interest (sic) and future prospects would be better in the UK rather than Syria. They are said to have the requisite entry clearance and the UK is where their father currently resides”.

23. The judge turned to s.117B of the 2002 Act and found at paragraph 44 that there was limited evidence of the Appellant’s current needs. The judge said that she

had not been provided with evidence that the Appellant is able to meet those were she residing in the UK or that she would be able to afford to pay privately (presumably for healthcare). The judge said that she had not been provided with evidence of the likely costs for private healthcare in the UK, however the judge said that she was mindful that the Appellant had not been able to demonstrate that she could be financially supported here. The judge concluded that it is likely that the Appellant would need to seek the assistance of the NHS in the UK.

24. In relation to the proportionality assessment the judge took into account that the Appellant could not meet the requirements of the IR, she was not financially independent as the Sponsor had not demonstrated that he could afford to provide for her living expenses and accommodation which would increase the burden on the taxpayer. The judge found that it is likely that the Appellant would need to seek the assistance of the NHS which increases the burden on the taxpayer and that the Appellant does not speak English and was therefore less likely to integrate with the wider community.
25. The judge took into account the factors in favour of the Appellant, namely that she suffers from some medical issues which were not clearly evidenced, she was living in Daraa where the war is said to have restarted although she stated that the Appellant did not provide material evidence of this. That she was at present being supported by neighbours and friends. However, in relation to the latter point the judge gave "limited weight to this due to the lack of material evidence".
26. The judge said there was no material evidence that the Appellant's daughters have left Syria. The Appellant currently lived with her grandchildren. She found there was no material evidence that they had been granted entry clearance and therefore she gave limited weight to this.
27. The judge took into account that the Sponsor lives in the UK, however there was no evidence of ongoing communication and the Sponsor's evidence was that the Appellant had stopped taking his calls. The judge found that it was possible for the Sponsor to resume remote communication with his mother and in future to visit her in a safe third country.
28. The Sponsor attended the hearing before me. He relied on one ground of appeal which is characterised as a failure to provide "proper reasons/error of fact". It is asserted that the judge did not take into account the country conditions, the evidence of income from land in Syria, the Sponsor and his brothers' employment in the UK and the absence of medical treatment available to the Appellant in Syria. It is asserted that the medical report produced was a basic one from the Appellant's GP. As a result of the country conditions it is not possible to obtain a report from a specialist or to receive medical treatment. It is asserted that the judge failed to understand the circumstances of the country and failed to understand the circumstances of the Sponsor and his brother which led to them being separated from the Appellant, and that communication using social media would not facilitate family life because there are a lack of facilities in Syria.
29. At the hearing before me the Appellant's son, the Sponsor attended. His English was not adequate to ensure that he understood the proceedings; however, there were members of the Appellant's family at the hearing who were able to understand. They were content to proceed with the hearing. I considered that it was in the interests of justice to proceed with reference to

Rule 2 of the 2018 Procedure Rules.

30. I decided to hear from Mr Avery initially in order to decide how best to proceed. Mr Avery did not have a copy of the Appellant's bundle that was before the First-tier Tribunal. This was made available to him. I gave him time to consider this. Mr Avery relied on the Rule 24 response. The Secretary of State relied on the finding of the judge that Article 8 (1) was not engaged which is not challenged in the grounds.
31. I indicated to Mr Avery that in my view the grounds prepared by the unrepresented Appellant are sufficiently broad to challenge the finding of family life. However, he submitted that notwithstanding this being the case, there was no error in the decision pointing out that the burden of proof rests on the Appellant. He said that the judge was entitled to focus on the IR and that the fundamental problem was the paucity of evidence.

Error of Law

32. It was not necessary for me to hear submissions from the Appellant and therefore not necessary to adjourn to arrange for an interpreter. I find that the judge materially erred in law. While I appreciate that the evidence before the First-tier Tribunal was thin, there was evidence that this was on account of the ongoing general situation in Syria and specifically in this case that the Appellant was not able to access any healthcare available because her sons were considered to be deserters. This is an issue the judge did not engage with. In respect of the country situation, while there was no documentary supporting evidence, there are documents in the public domain which may be capable of supporting the Sponsor's evidence.
33. While the judge may have been entitled not to rely on the letter purported to be from a medical practitioner in relation to the health of the Appellant, there was evidence in the letter concerning the relationship that the Appellant has with her adult children/family in the United Kingdom and which was capable of supporting that she is vulnerable and that there is a level of emotional dependency which was capable of supporting family life which the judge did not engage with. The judge confined consideration of this evidence to whether the very stringent test under the IR had been met rather than in the wider assessment of Article 8 despite the Appellant conceding that the IR could not be met.
34. In the RFRL the ECO stated that:-

"You have raised concerns with regards to you being an elderly lone female in Syria which have been taken into consideration. However I am not satisfied that you can meet the higher threshold under the exceptional circumstance requirements. It is noted that you have two adult daughters residing in Syria who can help and aid you in any way needed. Therefore I am not satisfied that the exceptional circumstances..."

The judge did not make a finding about whether the two adult daughters of the Appellant were in Syria at the material time. She said that without further details it is difficult to make a finding on this point. There was an explanation given for the lack of supporting evidence and there was oral evidence from the Sponsor. The judge should have made a finding whether she accepted this evidence or not.

35. The Appellant's case was that her minor grandchildren with whom she was living in Syria had been granted entry clearance to join their father here. The evidence was that they would not come to the United Kingdom without their grandmother, the Appellant, who has been caring for them. It not clear why the judge did not believe that the Sponsor's children had been granted entry clearance. It was incumbent on the judge to try to understand the situation of the Appellant at the date of the decision. The judge failed to take into account the obvious difficulties arising in present day Syria.
36. I appreciate that neither party was represented at the hearing. There was no cross- examination. While a judge must not descend into the arena, there is nothing to stop them from asking questions. From the decision it is my view that the judge did not have a clear picture of the Appellant's situation in Syria at the date of the decision. While this may have been as a result of the presentation of the case and that both parties were unrepresented, in order to make adequate findings of fact where an Appellant is unrepresented/represented by a family member as in this case or a lay person, a judge should assist by identifying the material issues at the start of the hearing with reference to the RFLR/requirements of the law. This will enable full participation in the proceedings. A judge should seek further clarification, if necessary, to resolve areas of conflict and make adequate findings. The Equal Treatment Bench Book gives helpful guidance on the issue.
37. I set aside the decision of the First-tier Tribunal to dismiss the Appellant's appeal. None of the findings of the judge were preserved. The matter will be heard afresh.
38. I decided that it would be appropriate for the matter to be remitted to the First-tier Tribunal for a re-hearing before a different judge.
39. The decision of the judge to dismiss the Appellant's appeal is set aside. The matter is remitted to the First-tier Tribunal for a fresh hearing.

Joanna McWilliam

Judge of the Upper Tribunal
Immigration and Asylum Chamber

25 April 2023