



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER
Extempore

Case No: UI-2022-001958
First-tier Tribunal Nos:
HU/51244/2021
IA/05887/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 28 March 2023

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

MRS THEVRANY CHANDRAKUMAR
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Badar, Counsel, instructed by Imperium Chambers
For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

Heard at Field House on 23 December 2022

DECISION AND REASONS

1. The appellant appeals with permission against a decision of First-tier Tribunal Judge Monson promulgated on 14 March 2022 dismissing her appeal against a decision of the Secretary of State to refuse her entry clearance as the adult dependent relative of a person present and settled here, that is her daughter whom I refer to as the sponsor.

2. The appellant is a citizen of Sri Lanka born on 9 March 1955. Her application was made on 12 November 2020 for entry clearance. In short, the basis for her claim is that she is widowed, requires constant medical care and daily care which cannot in reality be provided in Sri Lanka owing to a number of problems, specifically the lack of proper available care for her multiple problems, both psychological and medical. Although some help has been provided in the past by the sponsor's sisters in India and there has been a rota of carers on a temporary basis in Sri Lanka, that is not viable and that in reality the requirements of the relevant Immigration Rules are met.
3. The Secretary of State was not satisfied that that was so for the reasons given in the refusal letter. The appellant appealed against that decision adducing a number of medical reports in respect of her. There was a report from a Dr Thevagharam of 2 July 2021, there was also a letter from a Dr Kanthanesan of 12 October 2020, and in a supplementary bundle there was a further letter from Dr Thevagharam along with a list of the medicines prescribed to the appellant. In addition, there is a psychiatric report from a Dr Dhumad who is based in the United Kingdom dated 10 November 2021, that report being prepared after he had interviewed the appellant with the assistance of an interpreter and the sponsor via a video link.
4. The judge heard evidence from the sponsor and her husband. He also had before him the bundle, the supplementary bundle and the respondent's bundle. He also heard submissions from the appellant's representative at that hearing, Ms Walker of Counsel.
5. The judge found that there was a lack of consistency as to an event in 2017 which had traumatised the appellant such that she was unable to receive care from anyone she did not know prior to 2017. The judge identified discrepancies in the account of that event at paragraphs 55 and 56 considering them to be highly immaterial. The judge also reached conclusions adverse to the appellant at paragraphs 57, 58 and through to paragraph 61 regarding the account of what the appellant's care is, how it is provided and what she needs. The judge concluded that the appellant did not meet the requirements of the Immigration Rules, nor did he consider that Article 8 was met outside of those Rules finding that he was not satisfied there was a family life continuing between the appellant and sponsor. He considered in the alternative if that was so that the decision was proportionate.
6. The appellant sought permission to appeal on a number of grounds described by Judge Komorowski in granting permission (an observation with which I agree) that they are verbose, lack in specification and stray into submissions. That said, the grounds on which permission are granted fall into four discrete grounds. First, that the judge erred in his assessment that there was no suggestion that a rota of family or friends giving care would need to cease. Second, that the judge had erred in placing weight on an apparent inconsistency regarding the robbery in 2017 not faced by the sponsor or put by the respondent. Third, in effect asking whether the

family life the appellant and sponsor had endured rather than whether it currently existed, and fourth, whether he erred in taking account of care available in India in assessing whether the sponsor, a residence of Sri Lanka, could obtain the required level of care in the country where she is living.

7. I deal with the grounds in order. With respect to the first ground while I accept that the judge does appear to have misunderstood at best the evidence as to whether the rota of carers was ceasing or not. The question then remains as to whether that is material. I consider that that is a point best considered in conjunction with the second ground to which I now turn.
8. There was significant discussion of this ground from both representatives for whose assistance I am grateful. Broadly, at paragraph 55 the judge identified consistencies as to the event in 2017 to which I have already referred, an event in which is said to be the catalyst for the appellant no longer being able to receive care from anyone she did not know. The judge described these as highly material as a central plank of the claim that she will only allow care to be given to her by people she already knew. The judge identifies first that the appellant gave two versions of the incident to Dr Dhumad and that the difference between them is significant. He identifies that there is no independent confirmation of the incident, notes that the sponsor refers merely to a violent neighbourhood theft incident without saying that there was a close relative who was the victim, and that a further discrepancy is introduced by Dr Thevaghara who refers to the appellant has having experienced theft rather than having heard about somebody else who had experienced theft in 2017.
9. The first point to be taken is that none of these alleged discrepancies were put to the appellant or her representatives during the hearing, nor are they points taken by the respondent either in the refusal letter or in submissions at the hearing. There does not appear to me to be any basis on which these points were in fact raised by the judge and he should have done so, not least for the reasons to which I turn now.
10. First, despite valiant efforts by Ms Cunha, she was unable to identify in the report of Dr Dhumad the second version of events which was, as the judge records, that an aunt was beaten up by a local gang who took advantage of the fact that she was living alone and the same gang was now targeting her. Neither representative was able to identify this account in any of the other documents. Second, it is not an inconsistency for the sponsor to refer to a violent neighbourhood theft incident, that is a lack of detail. Third, the discrepancy referred to as existing in the account of Dr Thevaghara is not in fact a discrepancy. What Dr Thevaghara says is simply that the appellant had experienced theft in 2017. That does not mean necessarily that she had been the victim of it or that she knew the victim but simply that she had experienced that event. Again it is simply a lack of detail, it is not a discrepancy. Thus not only did the judge fail to raise apparent discrepancies and points about which, if they were correct, he could rightly have been concerned, his failure to raise them properly

with the authorities led to him making mistakes of fact as to what the evidence in fact was which illustrates clearly why the judge should have raised the point in the first place. I am satisfied given what the judge says at paragraph 56 that this was a material error and because it is material it is also in my view necessary to find that ground 1 is material.

11. Turning to ground 3, it does appear to me that the judge did err in not properly assessing whether there was a family life as at the date of hearing which is the correct test. In the case of elderly relatives it may well be that the family life between that person and a child ceases to be family life as, for example, between a fit and active 50 year old and a daughter who is 20 who is living her own life, but that situation may well change as the individual grows older and becomes more dependent as a result, for example, of being widowed or of suffering from serious ill health, be it physical or mental. Thus the judge should have asked that. I am less satisfied that it was a material error given that the judge goes on to consider the **Razgar** questions but given my findings of the assessment under the entry clearance Rules which was a clearly prior question to assessing whether there were any reasons outside the Rules that there would be a breach of Article 8 this was material.
12. Turning finally to the fourth ground it is accepted by the Secretary of State that the judge erred in taking into account the availability of care for the appellant in India as it is clear from the provisions of the Rules themselves that it is the provision of care in the applicant's own country which is relevant, not the availability of care elsewhere.
13. Accordingly for these reasons I am satisfied that the decision of the First-tier Tribunal involved the making of an error of law. The question then arises as to whether having set the decision aside it should be remitted to the First-tier Tribunal or whether it should be reheard in the Upper Tribunal.
14. I consider that given the procedural error clearly identified above that it follows that the appellant did not receive a fair hearing in the First-tier Tribunal and that following the relevant guidance the appropriate course of action is to remit the appeal to the First-tier Tribunal for a fresh decision on all issues. I am fortified in that decision by the fact that there does now appear to have been a deterioration in the appellant's medical situation as evidenced by a further report from Dr Thevagharam which, although I have not taken into account in analysing whether there was an error of law, is a matter which falls to be considered in assessing whether the matter should be remitted to the First-tier Tribunal given that the extent of any re-making of fact findings is a relevant factor.

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.
2. I remit the appeal to the First-tier Tribunal for it to make a fresh decision on all matters; none of the findings of fact are preserved.

Signed

Date 13 February 2023

Jeremy K H Rintoul
Upper Tribunal Judge Rintoul