



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-006045
First-tier Tribunal No:
HU/58173/2021
IA/17906/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 25 April 2023

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

SHAMA PAUL
(NO ANONYMITY ORDER MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - UKVI

Respondent

Representation:

For the Appellant: Mr A Badar, of Counsel, instructed by Longfellow & Co Solicitors

For the Respondent: Ms A Everett, Senior Presenting Officer

Heard at Field House on 21 March 2023

DECISION AND REASONS

Introduction

1. The appellant appeals with permission against a decision of Judge of the First-tier Tribunal Zahed ('the Judge') sent to the parties on 11 November 2022, dismissing her human rights (article 8) appeal.
2. She seeks entry clearance as an adult dependent relative under Appendix FM of the Immigration Rules, and alternatively on human rights (article 8) grounds outside of the Immigration Rules.

Brief Facts

3. The appellant is a national of India and presently aged 77. Her sponsor is her son, a British national, who resides in the United Kingdom. She has health issues which are addressed in medical documents filed with the First-tier Tribunal.
4. Having been granted entry clearance as a visitor the appellant travelled to the United Kingdom in 2006, 2007, 2010, 2011, and 2013.
5. The appellant applied for entry clearance as an adult dependent relative on 25 August 2021, with the respondent refusing the application on the same day.
6. Statutory appeal rights were exercised by the appellant, and the respondent's decision was upheld by an entry clearance manager review conducted on 31 May 2022, save that it was conceded that the appellant met the relevant financial eligibility requirement.
7. The outstanding issues on appeal are:
 - (i) Whether, as a result of age, illness or disability, the appellant requires long-term personal care to perform everyday tasks:
E-ECDR.2.4 of Appendix FM.
 - (ii) Whether the appellant is able, even with the practical and financial help of her sponsor, to receive the required level of care in India because:
 - (a) it is not available and there is no person in that country that can reasonably provide it; or
 - (b) it is not affordable:
E-ECDR.2.5 of Appendix FM

First-Tier Tribunal Decision

8. The Judge conducted the hearing at Hatton Cross via CVP on 11 October 2022 and, not on '11 October 2021' as erroneously identified on the front page of the decision. The appellant's sponsor and her daughter-in-law attended and gave evidence.
9. The Judge observed at [10], *inter alia*,

'... However, there is no current medical report as to what kind of day-to-day care she needs. I find that on the evidence before me the appellant is able to undertake her daily activities.'

10. The Judge proceeded to find that the appellant was unable to meet the requirements of the Immigration Rules, and additionally found that there were no exceptional circumstances to establish that the refusal of entry clearance was a disproportionate interference with the appellant's family life rights under article 8. The appeal was dismissed.

Grounds of Appeal

11. The appellant relies upon grounds of appeal drafted by Mr Badar, who represented her before the First-tier Tribunal. Three grounds of appeal are advanced:

- (i) The First-tier Tribunal made irrational findings and did not consider relevant evidence.
- (ii) The First-tier Tribunal made irrational findings as to the appellant's daughter in India being able to care for her.
- (iii) The First-tier Tribunal failed to consider submissions advanced by the appellant in respect of the article 8 assessment.

12. I observe that ground 1 is founded upon the Judge declaring at [10] that there was no current medical report addressing the appellant's day-to-day care needs.

13. Judge of the First-tier Tribunal Monaghan granted permission to appeal by a decision dated 15 December 2022, reasoning, *inter alia*:

'2. The Judge has arguably made an error of law in stating at paragraph 10 of his decision that 'there is no current medical report as to what kind of day-to-day care she needs', given that there are reports from two Doctors in the evidence at pages 23 and 25, both of which contain evidence appertaining to the Appellant's daily living activities and care needs. The Judge has arguably therefore failed to take into account or to deal with material evidence in the appeal when reaching his conclusions.

3. The other grounds whilst less cogent, are still arguable.'

Discussion

14. At the outset of the hearing before me Ms Everett properly conceded that ground 1 established a material error of law and further accepted that the nature of the error required the appeal to be remitted back to the First-tier Tribunal. Unsurprisingly Mr Badar did not dissent from this approach.

15. It is unfortunate that in an adult dependent relative appeal, where medical evidence was relied upon at the hearing to establish the case advanced, a Judge should, when writing his decision, reject medical evidence filed without raising his concerns as to the age of the evidence at

the hearing. The sole basis for not considering letters from medical practitioners identifying the appellant's daily living activities and care needs is identified as the opinions not being 'current'. No explanation is provided as to what constitutes 'current', nor why on the facts of the appellant's case the evidence filed with the entry clearance application and considered by the respondent was inadequate to the extent that it was not proper to consider it. The impact of the age of a report in an assessment is one of weight, and proper reasons should be provided if no weight is to be given to medical evidence. In this matter I observe that the appellant suffers from a neurodegenerative disease that is unlikely to have improved since the medical letters were signed.

16. It is appropriate that I detail the medical evidence that was placed before the Judge.
17. There was a letter from Dr J D Shukla, a general practitioner in New Delhi, dated 1 August 2021. Dr Shukla expressly notes that he has treated the appellant for several years as her general practitioner. He details within his letter, *inter alia*, that the appellant's ability to mobilise is compromised, affecting her independence. She only walks indoors and is unable to mobilise outside of the house. She exhibits mild symptoms of Alzheimer's disease. Dr Shukla opines that the appellant cannot perform independent daily living activities and requires constant care. He observes personal difficulties arising from her forgetfulness.
18. The appellant further relied upon a letter from Dr Ashwani Kumar, psychiatrist, dated 28 August 2021. Dr Kumar confirms that he has seen the appellant professionally for many years. He details the appellant's medical condition as:

'... fast deteriorating as she is not taking her medication and prescribed diet on time. Her regular concern and fear of living alone and not being able to live with her son is a constant source of mental stress and anxiety. She invariably refuses to have meals cooked by [her] servant/attendant owing to her OCD - recurrent thoughts of contamination and suspicion.'
19. Drawing upon the medical opinion relied upon, and related medical evidence filed with the First-tier Tribunal, the sponsor and his wife drew up a two-page care plan.
20. I note that the index to the appellant's bundle detailed the medical letters and the care plan, so they were clearly brought to the Judge's attention.
21. I am satisfied that the error in relation to the medical evidence addressing, in part, the appellant's daily living activities and care needs was clearly material, and so key documents relied upon by the appellant were not adequately considered. The failure to place any weight on medical evidence amounts to procedural unfairness as the Judge was

required to take reasonable steps to acquaint himself with relevant material and to then properly consider that information.

22. I express my concern as to the fundamental failure of the Judge to provide adequate reasons as to why he did not consider relevant medical evidence placed before him, which I accept was relied upon by Mr Badar at the hearing in October 2021.
23. As I have found there to be a material error of law in respect of ground 1, the identified material error in respect of procedural unfairness requires the decision to be set aside and so there is no requirement to consider grounds 1 and 2. It is proper that no findings of fact be preserved.

Postscript

24. I address two matters by postscript.
25. This was a matter where the First-tier Tribunal should properly have considered reviewing and setting aside the decision of the Judge under rule 35 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014. It would have been reasonably open to a reviewing judge to conclude that ground 1 was likely to be successful considering the content of the medical evidence and the approach adopted by the Judge.
26. As observed at the hearing, there are real concerns as to the undated skeleton argument, running to ten pages, filed by the appellant's solicitors with the First-tier Tribunal. I make it clear that the document was not drafted by Mr. Badar. A real concern is the absence of any paragraph numbering, which is wholly unacceptable in a skeleton argument filed with a tribunal, whether the First-tier Tribunal or this Tribunal. The document itself is unimpressive. It seeks at one point to identify a 'Schedule of Issue', which fails entirely to concisely identify the issue(s) in the appeal. Rather, it proceeds to set out in their entirety various paragraphs of the Immigration Rules over a page and a half. Having read the document, it entirely fails in its basic aim of aiding any judge reading it to identify the core issues of complaint advanced in the appeal. The document is also unhelpful by being largely generic in nature, with repetitive reference to well-known judicial authorities. Concerningly, it adopts the deprecated approach of cutting and pasting entire paragraphs from authorities, without any engagement as to whether the *ratio* of the judgments could be expressed in a sentence or two. The document fails in its primary task, to be persuasive. As observed to Mr. Badar, I would not expect to see a document in this form again, nor should the First-tier Tribunal at the next hearing of this appeal.

Resumed Hearing

27. Both parties agreed that this matter should be remitted back to the First-tier Tribunal because the hearing before the Judge was subject to procedural unfairness.
28. I am satisfied that the nature and substance of the procedural unfairness that arises from the Judge's decision is such that it would be unfair to the appellant to lose her opportunity to advance her appeal before the First-tier Tribunal. In such circumstances I consider it appropriate that the appeal be remitted to the First-tier Tribunal.
29. The appellant has sufficient time to secure and file further medical evidence.

Decision and Reasons

30. The decision of the First-tier Tribunal, sent to the parties on 11 November 2022, involved the making of a material error of law. I set aside the decision pursuant to section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007.
31. No findings of fact are preserved.
32. This appeal is remitted to the First-tier Tribunal sitting at Hatton Cross, to be heard by any Judge other than Judge Zahed.

D O'Callaghan
Judge of the Upper Tribunal
Immigration and Asylum Chamber

29 March 2023