IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005346
First-tier Tribunal No:
HU/55775/2021
LH/00106/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 16 March 2023

Before

UPPER TRIBUNAL JUDGE LINDSLEY
DEPUTY UPPER TRIBUNAL JUDGE SYMES

Between

MOSAMMET FETEMA AKTER
(ANONYMITY ORDER NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the Appellant: Mr Biggs of Counsel instructed by Trent Law Solicitors
For the Respondent: Ms Everett, Senior Home Office Presenting Officer

Heard at Field House on 7 March 2023

DECISION AND REASONS

Introduction

1. This is the appeal of Mosammet Fetema Akter, a citizen of Bangladesh born 15 January 1955, against the decision of the First-tier Tribunal dismissing her appeal, against the refusal (on 2 September 2021) of her application (of 16 April 2021) to join her daughters in the UK as their adult dependent mother.

2. This appeal was anonymised by the First-tier Tribunal though the parties were unable to say why that step had been taken. There appears no justification to maintain that order given the generally recognised importance of open justice.

3. The application to the respondent was made on the basis that the Appellant found life increasingly difficult abroad due to her physical and mental health conditions. Her four daughters, Jannatul (the eldest, and the formal Sponsor, who works as a healthcare assistant and whose husband is a research medical biologist), Ummey, Sokina and Rabeya, all British citizens, resided in the UK.

4. The respondent refused the application on the basis that it appeared that adequate care arrangements were already in place in Bangladesh and that whilst she suffered from depression it was not established that she required long term personal care. There were no unjustifiably harsh consequences to the refusal.

5. The appellant's husband was a British citizen who had returned to Bangladesh from the UK following his first wife’s death here, marrying the Appellant in 1989; they lived together in Bangladesh until his death in 2009. At that time her four daughters relocated to the UK, her father having obtained British citizenship for them in 2004, where they were now all married. Things became more difficult for her with the death of her mother in April 2017 and her father in January 2020; they had previously supplied emotional support when she was lonely. Now the appellant feared that she would die alone in her own house. Jannatul had daughters born in September 2014 and May 2020 and she wanted to see them. It was difficult for her to sleep at night because of the noises she heard and it was not possible to persuade helpers to sleep at her home constantly. Jannatul and her husband could provide her with emotional and psychological support if she was admitted to the UK and could accommodate her in their three-bedroomed house. The other daughters supplied letters explaining the appellant's distress that they had witnessed when two of them had visited her in 2019.

6. The First-tier Tribunal addressed the facts it considered relevant, noting the undisputed evidence that the appellant suffered from ischaemic heart disease, asthma, a fatty liver, and tension headaches (which it styled as physical problems commensurate with her age and low mood not requiring any specific treatment), and anxiety and depression. The appellant was presently supported by her daughters financially; she might be entitled to

a UK pension when she reached pensionable age. Her daughters arranged for assistance with washing, housework, and general assistance, for which they paid a local villager £50-60 monthly; the appellant was taken to appointments and on shopping trips by her own brothers.

7. Based on that evidence, the First-tier Tribunal concluded that

   (a) The appeal failed under the adult dependent relative route: she was relatively able and apparently required no assistance with her personal daily care, and such care as was required had already been arranged and was affordable.

   (b) Considering the appeal by reference to ECHR Art 8, factors in the appellant's favour were Ummey's need for regular blood transfusions which would preclude her travel to Bangladesh; factors against her were the fact that her "primary family life" would be with the Sponsor daughter rather than the other daughters, the fact she did not meet the adult dependent relative route criteria and the importance of maintaining immigration control by required adherence to that route, the possibility of making visitor applications to see her daughters in the UK, her ability to obtain the appropriate medical treatment in Bangladesh, and the possibility of three of the four daughters relocating to Bangladesh if they wished to do so; additionally having regard to the statutory factors set out in NIAA 2002 s117B she was not financially independent and did not speak English, there was a likelihood that in the future the UK would have to provide for her medical care and maintenance.

8. The appellant sought permission to appeal, which was granted by the First-tier Tribunal on 10 November 2022 on the basis that that it was arguable the evidence had not been adequately analysed.

Submissions – Error of Law

9. The grounds of appeal contend that the First-tier Tribunal erred in law by

   (a) Treating English language proficiency and financial independence as mandatory requirements when the adult dependent relative route did not specify those as relevant criteria and when the respondent's decision had not challenged the availability of maintenance and when the evidence showed that the appellant was maintained by her daughters.

   (b) Failing to have regard to important aspects of the witness statements of the UK resident family and to the medical evidence: in particular, Dr Noor's statement that she was seeing a psychiatrist for depression and that she was worried about her health and vulnerabilities given her daughters lived away from her; her conclusion was that her psychological wellbeing would be improved by reunion with her daughters. Furthermore, Dr Ashraf, a psychiatrist, had stated that her anxiety and constant depression were attributable to her current

circumstances and represented a progressing psychological trauma set to worsen; if her (family) circumstances changed without bringing any improvement in her mental health then she should be re-examined.

(c) Failing to consider the Home Office's own Guidance which mandated reference to "the prevailing cultural tradition and conditions in the country where the applicant lives", bearing in mind the evidence that the neighbour who visited her daily to help with housework and sleep in her home overnight had her own commitments by way of family boundaries, which sometimes prevented her attendance.

10. For the appellant Mr Biggs provided a helpful and concise skeleton argument which argued that the approach taken by the First-tier Tribunal to financial independence was contrary to *Rhuppiah,* and that the impact of the appellant's psychological and mental health problems had not been evaluated, which was a material error of law as they were crucial to the questions as to her need for "long-term personal care to perform everyday tasks" and as to the availability of any such care.

11. For the respondent, Ms Everett expressed some sympathy for the arguments advanced by Mr Biggs, and did not argue that we should uphold the decision.

Conclusions – Error of Law

12. The conclusion with respect to the Article 8 ECHR appeal as seen through the prism of the Immigration Rules, set out at paragraph 19 of the decision, does not set out the relevant contested part of the Immigration Rules. It is simply said that the appellant does not have health problems of a level needed to qualify, as she is relatively able and does not appear to require assistance with day to day personal care, and further if she did this require this it could be bought by her children at an affordable rate. The relevant provisions of the provisions for adult dependent relatives are in fact:

> "**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-
>
> > it is not available and there is no person in that country who can reasonably provide it; or
> >
> > it is not affordable."

13. Of these requirements, Sir Terence Etherton MR in *Britcits* [2017] EWCA Civ 368 wrote §59:

> "Those considerations include issues as to the accessibility and geographical location of the provision of care and the standard of care. They are capable of embracing emotional and psychological requirements verified by expert medical evidence. What is reasonable is, of course, to be objectively assessed."

Singh LJ in *Ribeli v Entry Clearance Officer, Pretoria* [2018] EWCA Civ 611 §47 agreed that "there can be such a thing as unmet needs; the fact that a person's needs are not being met does not mean that they do not have those needs."

14. The appellant relied not only on her care needs for physical health problems but also on the importance of the emotional and psychological support of her daughters. Clearly that support is potentially important for the preservation of her mental health. If her mental health deteriorates, then there is a real risk that she will not be able to care for herself. That consideration arises squarely under the Rules, though also more broadly, given that Article 8 protects, as shown by *Bensaid v United Kingdom* [2001] ECHR 82, aspects of identity and personal development, and the right to establish and develop relationships with other human beings and the outside world. However the First-tier Tribunal failed to make any findings on the expert medical evidence which *Britcits* identifies as central to the relevant enquiry. Nor did the Tribunal below have regard to the precarity of the present care arrangements abroad, given the evidence of the carers' attendance being intermittent. That consideration was directly relevant to the availability of adequate care arrangements.

15. Given that one's ability to meet the Immigration Rules is relevant to the assessment of matters more broadly (though under Appendix FM strictly speaking this is by reference to the "unjustifiably harsh" rubric in GEN.3.2 rather than "outside the Rules"), our conclusions on the provisions directly addressing adult dependent relatives inevitably cast doubt on the approach taken to Article 8 ECHR more generally. Beyond that consideration, however, and as identified by the grounds of appeal, the First-tier Tribunal's approach to the question of financial independence was clearly misdirected. Lord Wilson in *Rhuppiah* [2018] UKSC 58 §55 explained that:

> "The parties are correct to join in submitting to this court that financial independence in section 117B(3) means an absence of financial dependence upon the state. Why would it be "in the public interest" that they should not be financially dependent on other persons? Why would it in particular be "in the interests of the economic well-being of the United Kingdom" that they should not be dependent on them?"

16. The weighing of financial independence against the appellant on these facts is clearly contrary to authority, and an error of law. We should add that we also have concerns as to the First-tier Tribunal's belief that family life might continue via the appellant visiting the UK; the Upper Tribunal's experience is that the refusal of a settlement application is very likely to seriously prejudice the likelihood of future visit applications succeeding, at least without the expense and time taken by pursuing statutory appeals against refusals.

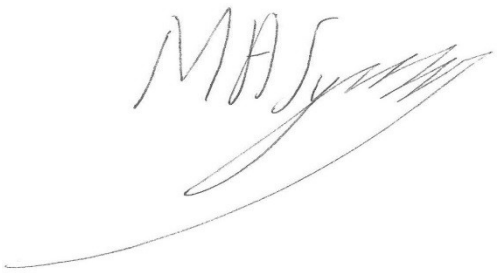
17. Having regard to these considerations we conclude that there are material errors of law in the First-tier Tribunal's decision. As full fact-finding is required on a re-determination of the appeal where four witnesses may be giving evidence (our own suggested time estimate being four hours), we remit the appeal to the First-tier Tribunal.

Decision:

(1) The making of the decision of the First-tier Tribunal involved the making of errors on points of law.

(2) We set aside the decision.

(3) We remit the appeal for hearing afresh before the First-tier Tribunal.



Deputy Upper Tribunal Judge Symes

13 March 2023