IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case Nos: UI-2022-002223
UI-2022-002214

First-tier Tribunal Nos:
HU/54877/2021- IA/12145/2021
HU/54875/2021- IA/12139/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 06 July 2023

Before

UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

AWATEF KAROUT (FIRST APPELLANT)
JYANA TALEB (SECOND APPELLANT)
(NO ANONYMITY ORDER MADE)

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellants: Mr P Haywood, Counsel
For the Respondent: Ms S Cunha, Senior Presenting Officer

Heard at Field House on 5 June 2023

DECISION AND REASONS

Introduction

1. The Appellants appeal with permission against the decision of First-tier Tribunal Judge Peer (the judge) promulgated on 4 May 2022 following a hearing on 20 April 2022. By that decision the judge dismissed the Appellants' appeal against the Respondent's refusal of their human rights claims.

2. The Appellants are both citizens of Syria. The first Appellant is the mother of the second. The United Kingdom-based Sponsor, Mr Taleb (the Sponsor) is the son of the first Appellant and the brother of the second. The Appellants applied for entry clearance (the applications being treated as human rights claims) to join the Sponsor in this country. The Sponsor has at all material times been a refugee. The human rights claims were refused by decisions dated 22 July 2021.

The judge's decision

3. Although the judge's decision was clearly carefully prepared and involved a good deal of work, I propose only to summarise it here, without intending any disrespect.

4. The judge first considered the Appellants' cases in the context of the Immigration Rules, in particular the adult dependent relative Rules set out in E-ECDR of Appendix FM. It was common ground that the first Appellant required help with her personal care. The Respondent's case was that the second Appellant could provide the required level of care. Ultimately, the judge agreed with this position. She found that whilst the second Appellant suffered from mental health problems, she was in a position to "reasonably provide" for the first Appellant's physical care needs and to do so for the "foreseeable future". The "rigorous and demanding requirements" of the adult dependent relative Rules had not been met. The judge then went on to consider proportionality in its wider context. She took a number of factors into account and concluded that the refusals of the human rights claims were not disproportionate. The appeals were accordingly dismissed.

The grounds of appeal and permission

5. The grounds of appeal essentially made the following points. Firstly, that the judge had failed to make any clear finding on the reliability of the Sponsor's evidence, particularly that relating to the ability of the second Appellant to care for the first. Secondly, the judge had failed to ask

herself the correct question and therefore misdirected herself in respect of what had to be demonstrated by the Appellants in order to meet the Rules. Thirdly, the errors in respect of the first two points fed into the judge's overall proportionality assessment, rendering it unsound. Fourthly, the judge had failed to properly consider relevant factors in the proportionality exercise.

6. Permission was granted by the Upper Tribunal on all grounds, with a particular focus on the first point referred to above.

The hearing

7. Mr Haywood assisted with the provision of clear submissions, addressing his grounds. Following this, and having clearly reflected on all the circumstances, Ms Cunha conceded that the judge had materially erred in law and that the decision should be set aside. Specifically Ms Cunha accepted that the judge had failed to expressly make a finding on whether the Sponsor's evidence was credible and, even assuming that it was, then failed to factor in his evidence into the assessment of whether the second Appellant could appropriately care for the first.

Discussion and conclusions

8. I remind myself that appropriate restraint should be exercised before interfering with a decision of the First-tier Tribunal, particularly when it has heard and considered a wide variety of evidential sources and reached conclusions based on evaluative assessments.

9. In the present case I am satisfied that the judge has materially erred in law such that her decision should be set aside.

10. Firstly, I agree with the Appellants' first ground of challenge and Ms Cunha's concession, namely that the judge failed to make a clear finding on whether she regarded the Sponsor's evidence as being credible and reliable. It is the case that she made a number of references to the evidence, but there was no finding as such. That of itself might not have been a material error because it is arguable by inference that she had

treated the Sponsor's evidence as being credible and reliable despite not stating this in terms. However, the problem - which in my judgment makes the error material - is that the judge then failed to factor in the credible and reliable evidence from the Sponsor when undertaking the assessment of whether the second Appellant could appropriately provide care to the first. I am satisfied that the Sponsor had given clear evidence (in writing and orally) as to his knowledge of the day-to-day lives of the Appellants through his regular communications with them. He had recounted that the second Appellant faced significant problems with her own mental health which resulted in her frequently being unable to get out of bed and to adequately care for herself. Further, her mental health problems presented a significant obstacle to her ability to reliably and consistently provide adequate care for the first Appellant, whose needs were significant.

11. Alternatively, if the judge rejected the Sponsor's evidence, she failed to explain why.

12. An example of the primary error being manifested is contained within [60], wherein the judge stated that:

> "There is also no detailed evidence as to the day to day reality of the second appellant and the evidence is primarily assertion and some level of speculation as to the severity of the situation on the part of the sponsor based on calls with the first appellant".

13. However, it is apparent that the Sponsor had provided relatively detailed evidence on the issue and had obtained the knowledge to regular telephone calls with both Appellants. That evidence, if assumed to be credible and reliable, did not require corroboration and fell to be taken into account on its own merits. The judge failed to do this.

14. Secondly, I am satisfied that the judge fell into a further error in respect of her approach to the relevant test under the adult dependent relative Rule, specifically E-ECDR.2.5. The test is undoubtedly "demanding and rigorous", but it is not insurmountable and makes

reference to the "required level" of personal care and, by way of reasonable implication, appropriate care would need to be provided on a reliable and consistent basis as well as being at an appropriate level. In the present case the judge appeared to accept that the second Appellant suffered from a mental health condition which had an impact on her own day-to-day life (although there are aspects of the decision which make this somewhat unclear). The judge stated at [62] that the mental health condition was not "particularly well controlled" and that on "some days" the second Appellant struggled. The judge found, however, that that situation was "different from being incapable of performing daily tasks", that the evidence did not demonstrate that the second Appellant "cannot perform everyday tasks" and that there was no "current inability of the second appellant to reasonably provide for the first appellant's physical care needs and to do so for the foreseeable future". In my judgment there is a substatial danger that the judge was applying too high a threshold by focusing on whether the second Appellant was "incapable" of performing certain tasks or providing care. A simple inability or incapability would fail to take account of the questions of reliable ability and consistency, both of which appeared on the face of the evidence to be questionable in light of the second Appellant's own problems.

15. Thirdly, whilst certain aspects of the grounds of appeal relating to the judge's wider assessment of proportionality appear to be simple disagreements with the assessment rather than the identification of actual errors of law, I am satisfied that the errors relating to the provision of care by the second Appellant to the first fed into that wider assessment rendering it, in all the circumstances, unsound.

16. For these reasons the judge's decision must be set aside.

Disposal

17. Having heard from the parties, I have concluded that remittal is the appropriate course of action. The Sponsor's evidence was not properly considered by the judge, or indeed the subject of any clear findings. It is

appropriate for the case to be reheard and clear findings being made on all sources of evidence.

18. On remittal the First-tier Tribunal will be aware that the Respondent has made certain concessions in this case, specifically that the first Appellant does require personal care, that the second Appellant was kidnapped in 2019, and that she suffers from a mental health condition. In addition, it is to be noted that the Sponsor's evidence went unchallenged before the judge. Whilst there can be no preserved finding in respect of his credibility, this fact may be thought of as a relevant consideration in respect of the next stage in proceedings.

Anonymity

19. No direction has been sought and none is appropriate.

Notice of Decision

The decision of First-tier Tribunal involved the making of errors of law and that decision is set aside.

These appeals are remitted to the First-tier Tribunal (Taylor House hearing centre) for a complete re-hearing

Directions to the First-tier Tribunal

(1) The remitted appeals shall not be heard by First-tier Tribunal Judge Peer;

(2) The First-tier Tribunal may issue any further case management directions, as appropriate.

H Norton-Taylor

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 15 June 2023