



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000639
First-tier Tribunal Nos:
HU/51573/2022
IA/02484/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 24 July 2023

Before

UPPER TRIBUNAL JUDGE SHERIDAN

Between

MS KANWALJIT KAUR
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Bukhari, Solicitor

For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

Heard at Field House on 19 June 2023

DECISION AND REASONS

1. The appellant is a citizen of India born on 20 April 1970. On 18 October 2021 she applied for entry clearance to join her daughter (“the sponsor”) in the UK.
2. In a decision dated 22 February 2022 the respondent considered whether the appellant qualified for entry as an adult dependent relative (“ADR”) and concluded that she did not. The respondent did not accept that the appellant needs long term personal care to perform everyday tasks; that she is unable (with family support) to obtain the required level of care in India; or that there would be adequate financial maintenance for her in the UK. It was also not accepted that there were exceptional circumstances that would render refusal of entry a breach of Article 8.
3. The appellant appealed to the First-tier Tribunal. The appeal came before Judge of the First-tier Tribunal Hawden-Beal (“the judge”). In a decision dated 29

December 2022 the judge dismissed the appeal. The appellant now appeals against this decision.

Decision of the First-tier Tribunal

4. The judge found that the appellant does not need long term personal care to perform everyday tasks. The findings in this regard are set out in paragraph 36 where the judge stated:

“The medical evidence before me does not support the claim that the appellant cannot manage every day tasks because of her age, illness or disability and the sponsor’s evidence is that she can manage these tasks but needs to be prompted to undertake them. There is no medical evidence of the appellant’s anxiety or panic attacks and no evidence that she has been prescribed any medication for her depressive illness. This is also confirmed by the letter from the Sehaj hospital. I therefore find that the appellant does not require long term care to perform everyday tasks because of her age, illness or disability and I am also satisfied that she could obtain such care with the practical and financial support of the sponsor because it is affordable and is available”.

5. The judge also found that the appellant’s care needs can be met in India, either through family and/or private provision. The judge found that the appellant has previously accessed physical and mental health care in India and her choice not to access counselling does not demonstrate that support is unavailable or unaffordable.

6. The judge found that the appellant has family support from her brother and other family members in India. The judge noted the evidence that the appellant has fallen out with her brother’s wife and in this respect the judge found in paragraph 35:

“The fact that the appellant does not get on with her sister-in-law is not a good enough reason to exclude her brother from being someone who could reasonably provide such care.”

7. The judge also considered the evidence that the appellant’s family had looked into options for care homes in India. In respect of these the judge found in paragraph 35:

“...nor is poor reviews, bad feelings and a bad experience by a friend a good enough reason for claiming that the care homes are not suitable for the appellant”.

8. With respect to the sponsor being able to maintain the appellant in the UK, the judge found in paragraph 37 that the appellant cannot meet the financial requirements because although the sponsor may currently have sufficient disposable income she is named on the mortgage on her property and if the situation were to change and she would need to pay the mortgage (currently paid by her brother) she would not have sufficient funds to meet the maintenance requirements for the appellant.

9. The judge took into consideration that the sponsor and her siblings in the UK made a decision to leave their mother in India without their support. In paragraph 42 the judge stated:

“There is no evidence before me of any exceptional circumstances. As noted above the sponsor and her brothers must have known at the time they came to the UK that there would come a time in the future when their mother would need care, if not through illness, then certainly through age and if that was not in their minds at that time because the appellant was living with her brother, it certainly should have been in their minds when the appellant began to live alone. They may not like the care homes, they may not trust the carers and their mother may have fallen out with her sister-in-law but none of that is exceptional and none will cause unjustifiably harsh consequences for the appellant or the sponsor or her brothers”.

Grounds of Appeal

10. When granting permission Upper Tribunal Judge Stephen Smith described the grounds as poorly drafted. The grounds are not separated out into distinct points and it is difficult to discern precisely what is being argued. Having considered the grounds as drafted, the grant of permission (where the appellant’s case is succinctly reformulated) and Mr Bukhari’s oral submissions, I would characterise the appellant’s case before me as comprising of the following six submissions.
11. Submission 1. The judge conflated the assessment of Article 8 outside the Rules with the assessment under the ADR rules and in so doing failed to properly address whether the requirements of the ADR rules were met.
12. Submission 2. When considering whether the appellant satisfied the requirements of the ADR rules the judge had regard to an irrelevant consideration, which was that the sponsor and the appellant’s other children ought to have known that an implication of their moving to the UK was that the appellant would be left without support.
13. Submission 3. The judge’s finding that the appellant does not need support for everyday tasks is inconsistent with the evidence and therefore was not rationally open to the judge.
14. Submission 4. The judge failed to properly consider evidence about the appellant not being able to rely on support from her brother in India and needing support from her children in the UK.
15. Submission 5. The judge mixed up the idea of affordability and availability, as it was never in question that the sponsor and her family could not afford to support the appellant; their case was that appropriate support was not available to the appellant because of her needs. If the judge had had regard to the totality of the evidence given by everyone involved it would have been clear that the appellant is not able to look after herself and requires long term personal care that can only be provided by her children who are in the UK.
16. Submission 6. The judge speculated about the sponsor’s possible future financial circumstances and should only have considered the actual evidence, which demonstrates that the sponsor is in a position to financially support the appellant.

Analysis

17. In order to be granted entry to the UK under the ADR rules, the appellant needed to establish, inter alia, the following “dependency requirements”:
- (a) as a result of age, illness or disability, she requires long-term personal care to perform everyday tasks; and
 - (b) she is unable to obtain the required level of care in India, even with the financial help of the sponsor because either: (i) the care is not available and there is no person in that country who can reasonably provide it: or (ii) the care is not affordable.
18. The medical evidence before the judge in respect of whether the appellant was able to manage everyday tasks was extremely limited. It comprised only of a short (single paragraph) letter from a neuropsychiatrist stating that she has a diagnosis of severe depression and needs “proper psychiatric treatment under family supervision”. There is nothing in this letter stating that the appellant needs support with day-to-day tasks. Mr Bukhari noted that there was evidence of numerous prescriptions but that is not evidence that the appellant needs help with day-to-day tasks. Mr Bukhari stated that reliance ought to have been placed on the sponsor’s witness statement where the appellant’s difficulties with her mental and physical health are described. However, it is not apparent even from this description that the appellant needs help with everyday tasks, and in any event the judge was entitled to expect there to be medical evidence to support any such contention. In the light of the lack of medical evidence, the judge was plainly entitled to find that the appellant does not require long-term personal care to perform everyday tasks. For this reason alone she could not succeed under the ADR rules.
19. Moreover, the judge was entitled to find that the appellant could not succeed for another reason under the ADR rules, which is that she could obtain care in India. The judge gave two cogent reasons for this. The first was that in India there is privately funded care provision that the appellant’s family could afford and, despite their concerns about the quality of this care, it had not been established that it would be inadequate. The second was that the appellant could receive support from family in India. Having considered the evidence about the appellant’s relationship with her sister-in-law, the judge was entitled to find that the appellant would nonetheless receive support from her brother.
20. A further requirement of the ADR rules is that the sponsor is able to provide adequate maintenance in the UK for the appellant. The judge’s findings in this regard do appear, as argued by Mr Bukhari, to be speculative. Essentially, the judge found that this condition is not met because it might be the case that in the future the sponsor would need to pay a mortgage that her brother currently pays. I accept that there is a degree of speculation in this finding. However, as submitted by Mr Lindsay, any such error would be immaterial because the appellant did not satisfy the dependency requirements of the ADR rules, as summarised at paragraph 17 above.
21. Mr Bukhari was critical of the judge making a finding that the sponsor and her brothers must have known when they came to the UK that a time would come when they would be unable to support their mother and that this was a choice that they had made. He argued that this is not relevant under the ADR rules. The difficulty with this argument is that it is tolerably clear that the judge considered

this issue, not in the context of assessing whether the ADR rules were met, but when considering article 8 outside the rules. In any event, even if the judge erroneously factored this into the ADR assessment, the error would be immaterial because the judge was entitled, for the cogent and sustainable reasons given, to find that the dependency requirements of the ADR rules (as summarised above in paragraph 17) were not satisfied.

22. Mr Lindsay submitted that this is a case where the appellant's Article 8 case did not go beyond a contention that the ADR rules were satisfied and therefore, given that the appellant did not meet the conditions stipulated in these rules, there was no basis to find it disproportionate under article 8 ECHR to refuse her entry. I agree. For the reasons given by the judge, the appellant fell significantly short of being able to establish that she met the conditions of the ADR rules; and other than her arguments as to why, in her view, she met those rules, there was nothing of any significance weighing in her favour in the proportionality assessment. The judge therefore reached a conclusion on article 8 outside the rules that was plainly open to her.
23. For these reasons, I would dismiss the appeal. Before concluding, I make an observation that the higher courts have made clear that caution should be exercised before interfering with findings of fact by a fact-finding judge. As emphasised in *Lowe v SSHD* [2021] EWCA Civ 62 this applies not only to findings of primary fact but also to the evaluation of those facts and to inferences drawn from them. In my view, this is precisely the type of case where such caution must be exercised. The judge made findings of fact about whether the appellant required long term personal care, whether she could receive support from her brother, and whether her family in the UK would be able to assist her in finding adequate privately funded provision in India. These are findings that, subject to irrationality, are matters for the judge who had the benefit of hearing the "whole sea of evidence" in the case. I am not satisfied that the grounds have identified any basis for disturbing these findings of fact.

Notice of decision

24. The decision of the First-tier Tribunal did not involve the making of a material error of law and stands.

D. Sheridan

Judge of the Upper Tribunal
Immigration and Asylum Chamber

14.7.2023