IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002117
First-tier Tribunal Nos:
HU/55501/2021
IA/13734/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 25 July 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

TANVEER AHMAD KASHIF
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr. B. Lams, Counsel, instructed by Clyde & Co
For the Respondent: Mr. E. Terrell, Senior Home Office Presenting Officer

Heard at Field House on 11 July 2023

DECISION AND REASONS

1. This is an appeal by the Appellant against a decision of First-tier Tribunal Judge Manuell (the "Judge"), dated 3 January 2023, in which he dismissed the Appellant's appeal against the Respondent's decision to refuse entry clearance as an adult dependent relative. The Appellant is a national of Pakistan with significant health needs. He applied to join his father in the United Kingdom.

2. Permission to appeal was granted by First-tier Tribunal Judge G Clarke on 20 May 2023 as follows:

> "2. It is arguable that the Judge materially erred when they found that Paragraph E-ECDR.2.4 was not met, having already accepted that the Appellant requires 24 hour supervision and care (Paragraph 24).
>
> 3. It is also arguable that the Judge materially erred in their assessment of the availability in Pakistan of the care required by this Appellant. The Judge has not made any findings in respect of the Occupational Therapy report which stated that the required level of care was not available. Furthermore, the Judge arguably erred by failing to provide adequate reasons why they did not accept the evidence from the Local Council in Pakistan, given that such evidence is specified evidence under Paragraph 35 of Appendix FM-SE.
>
> 4. It is also arguable that the Judge materially erred in their assessment of what care could be provided by the family in the United Kingdom by failing to consider the 'care plan' proposed by the family and instead inferring that because the Appellant's siblings are married they could not provide any care".

The hearing

3. I heard oral submissions from Mr. Lams and Mr. Terrell following which I stated that I found the decision involved the making of material errors of law. I set the decision aside and remitted the appeal to the First-tier Tribunal to be reheard.

Error of law

4. In relation to Ground 1 - insufficient and irrational reasoning in respect of E-ECDR.2.4 - it was accepted by Mr. Terrell that the Judge must have erred in including "2.4" at [25] given his finding at [17] that the Appellant still required 24 hour supervision and care. However, Mr. Terrell submitted that this was not material as the finding that the Appellant did not meet paragraph E-ECDR.2.5. was sustainable.

5. To meet E-ECDR.2.4 the Appellant had to show that he required long-term personal care to perform everyday tasks. The Judge states at [25]:

> "The tribunal according finds that the Appellant is unable to meet paragraphs E-ECDR.2.4 and E-ECDR.2.5 of Appendix FM of the Immigration Rules, which indicates the state's margin of appreciation for Article 8 ECHR purposes."

6. This is not consistent with his finding at [17] that:

> "The Appellant himself is older and his condition has deteriorated. There can be no doubt, as Judge Bowler found, that the Appellant still requires 24 hour supervision and care. The tribunal so finds".

7. I find that the Judge erred in finding that paragraph E-ECDR.2.4. was not met given his finding at [17].

8. I have carefully considered the grounds as they relate to paragraph E-ECDR.2.5. Mr. Lams focused on Ground 2 at the hearing which asserts that the Judge "failed to rationally take into account the "required level of care" needed by the appellant, including his need for emotional and psychological input - insufficient and irrational reasoning in rejecting the evidence of Dr. Mala Singh".

9. Mr. Lams submitted that the critical point made in Dr. Singh's report was that the Appellant needed long term practical and emotional input, which could only

be provided by his close family. That this support was only available from his family and could not be replaced by paid carers had not been followed through by the Judge in his consideration of the care which was needed, in accordance with paragraph E-ECDR.2.5.

10. I was referred to [59] of Britcits [2017] EWCA Cic 368. It was submitted that this requires the fact-finder to take into account the subjective requirements of the care needed, which can include emotional and psychological care when supported by expert medical evidence.

11. The evidence of Dr. Singh is set out at [19] as follows:

> "It is plain from that report that the Appellant is able to speak as Dr Singh interviewed him via Skype, although his communication was poor. Dr Singh considered that the Appellant needed emotional support from his family which could not be replaced by paid carers. She did not comment on the availability of care, whether live-in or residential placement, in Pakistan."

12. Further medical evidence of Dr. Arif and Ms. Mohiyuddin, OT, is set out at [20]:

> "Dr Khizra Arif ("Dr Arif") stated in his report prepared after meeting the Appellant on 24 August 2020: "In an ideal environment, Tanveer would benefit from 24 hour residential care permanently. This would provide adequate care and support and to minimise risks. However it is doubtful if this source of care can be accessed in Pakistan." Similar views were expressed by Ms Saima Mohiyuddin, ("Ms Mohiyuddin") Senior Occupational Therapist: "Tanveer would benefit from an enhanced and structured support if he was to remain in the community or from a specialist supported accommodation focussed on the care and management of patients with severe learning disability. Based on my years of experience in Pakistan, I am not aware of such a facility being available in Pakistan. The norm is that the family as a unit assumes responsibility for the management and care of their disabled offspring. The usual pattern is to provide a specialist LD nurse to liaise with his parents and would also require specialist LD psychiatric input.""

13. The Judge's finds at [22]:

> "Although Mr Ali said in his witness statement that the Appellant needed 'intensive' 24 hour care, that expression was not supported by the medical evidence. Clearly the Appellant has been managing on untrained carers, able to ensure he is fed, kept clean, takes his medicines and does not wander off. There was no evidence of specialist skills being needed. The Appellant is able to move around the village on his own. It may well be that the Appellant would benefit from a more structured regime but that is not the issue. The tribunal finds that the Appellant can be cared for by someone with basic first aid skills".

This paragraph does not take into account the evidence of Dr. Singh. There is no reference to the emotional support which the Appellant needs.

14. It was submitted by Mr. Terrell that it appeared that there was some tension between the reports of Dr. Singh and Dr. Arif set out at [19] and [20], and that with reference to [30], the Judge appeared not to agree that emotional support was needed. He submitted that the Judge appeared to favour the evidence of Dr. Arif. The Judge states at [30]:

> "Dr Singh's report was silent on any such arrangements, apart from expressing the view that the Appellant would benefit from the emotional support from his family.

> But Dr Singh's report offered no insight into how that emotional support would function after an absence of 20 years."

15. However, there is no consideration in the decision of whether there is a tension between the two reports, and no statement that the Judge prefers one over the other. When finding at [22] that the Appellant could be cared for by someone with basic first aid skills, there is no reference to either report, and no indication that the Judge has rejected Dr. Singh's evidence.

16. Considering this decision as a whole, there is no real engagement with Dr. Singh's report, and her evidence that the Appellant needed family involvement to give him the required level of care. This is central to whether or not paragraph E-ECDR.2.5 is met as the Appellant must show that the level of care he requires cannot be obtained in Pakistan as there is no person in Pakistan who could reasonably provide it. The evidence of Dr. Singh that the care required must be from a family member is central to this consideration. As set out at [59] of Britcits, the consideration of the emotional and psychological requirements should be taken into account if verified by expert medical evidence. Further, there is no reference to the evidence in the OT report of Ms. Mohuyuddin when considering the care needed.

17. I find that the Judge appears to have rejected the analysis in Dr. Singh's report that only a close family member could provide the required level of emotional input without giving reasons for why he has not accepted this evidence. I find that this is a material error of law.

18. The other grounds focused on at the hearing were issues of unfairness alleged in Grounds 8 and 9. Mr. Terrell accepted that Ground 9 indicated a procedural unfairness given that the existence of family life had not been raised in the Respondent's decision, in her Review or at the hearing. He accepted that if the Judge was going to question the existence of family life, the Appellant needed to be given the opportunity to make submissions on that issue.

19. In relation to the proportionality assessment, in the alternative the Judge had considered that if there were family life, the decision was in any event proportionate. Mr. Terrell accepted that, given that I had found that the findings in relation to the immigration rules could not stand, the proportionality assessment would have to be considered afresh.

20. Further, as Mr. Terrell accepted, the position of the Appellant's family in the United Kingdom and the situation that the Appellant would be in were he to come to the United Kingdom were considerations that the Judge should have had regard to in the proportionality assessment. However, the Judge had not referred to the care plan which the family had arranged.

21. This care plan was set out in in the covering letter provided to the Respondent and in the evidence before the First-tier Tribunal. E-ECDR.3.1. requires an Appellant to show that he can be adequately cared for. The representations provided with the application explained how the Appellant's care would be provided. The Respondent's decision took no issue with whether the Appellant could be adequately cared for by the Sponsor and his family in the United Kingdom. Neither was it subsequently raised in the Respondent's Review or at the hearing.

22. The Judge found at [26] that it should be inferred that the Appellant's brothers were married and would have significant responsibilities of their own which would also impact on the existing family setting in the United Kingdom, with reference to how the Appellant's care could be managed. At [30] he states that the inference to be drawn from the medical evidence is that the family's time is already occupied with the care of the Appellant's mother. He finds it is almost inevitable that the Sponsor would have to give up work to meet the care responsibilities he would assume for both his wife and the Appellant, or the Appellant would have to be placed into a residential home.

23. Both of these findings fail to take into account the evidence of the care plan, evidence which not challenged by the Respondent. Further, given that this issue had not been raised by the Respondent at any stage of the proceedings, for the Judge to have made findings on the adequacy of care in the United Kingdom without inviting submissions is procedurally unfair. I find that these are material errors of law.

24. Taking into account all of the above, I find that the Judge materially erred both in his consideration of whether the immigration rules were met and in his consideration of Article 8 outside the immigration rules. The findings in relation to both of these aspects are affected by these errors, and I have found that there was procedural unfairness. Taking into account the case of Begum [2023] UKUT 46 (IAC), and giving careful consideration to the exceptions in 7(2)(a) and 7(2)(b), I consider that it is appropriate to remit this appeal to be reheard in the First-tier Tribunal.

Notice of Decision

25. The decision of the First-tier Tribunal involves the making of material errors of law.

26. I set the decision aside. No findings are preserved.

27. The appeal is remitted to the First-tier Tribunal to be reheard.

28. The appeal is not to be listed before Judge Manuell.

Kate Chamberlain

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
22 July 2023