



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2023-002514

First-tier Tribunal No:
HU/55664/2022
IA/08175/2022

THE IMMIGRATION ACTS

**Decision & Reasons issued:
On 10 June 2024**

Before

UPPER TRIBUNAL JUDGE KOPIECZEK

Between

**ZAHRA MOGHADAM
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr K. Behbahani, solicitor.

For the Respondent: Mr D. Clarke, Senior Home Office Presenting Officer

Heard at Field House on 4 March 2024

DECISION AND REASONS

Introduction and background

1. This appeal comes back before me following a hearing before me on 16 August 2023 following which I decided that the First-tier Tribunal (“FtT”) erred in law in its decision to dismiss the appellant’s appeal of a decision to refuse indefinite leave to remain (“ILR”) as an adult dependent relative.

2. It is as well to restate some of the basic facts, and I shall reproduce parts of my earlier decision. The appellant is a dual Venezuelan/Iranian citizen, born in 1947. As I said in my earlier, error of law, decision, the focus of the appeal is in relation to Venezuela since that is where the appellant lived for many years before coming to the UK. The appellant made her application on 1 April 2021, for ILR as an adult dependent relative, having entered the UK as a visitor on 3 March 2020. The application was refused, on 20 August 2022, with reference to paragraph E-ECDR of the Immigration Rules (“the Rules). Home Office policy in relation to the Covid-19 pandemic allowed the appellant to make her application in-country rather than out-of-country, as would usually be required.
3. The appellant’s appeal against the decision refusing her application came before First-tier Tribunal Judge C. Scott (“the FtJ”) at a hearing on 30 May 2023, following which she dismissed the appeal, both with reference to the Rules and Article 8 of the ECHR outside the Rules.
4. At the appeal before the FtJ it was accepted that the appellant lives with her daughter, the sponsor, and has done since her arrival in the UK on 3 March 2020 and that they have a close emotional connection. It was not disputed that the sponsor provides financially for the appellant in the UK, and the FtJ concluded that there was family life between them.
5. The FtJ referred to the medical evidence and concluded that the appellant suffers from a major depressive disorder, anxiety and insomnia, which are currently treated with medication. She accepted that between July 2020 and August 2022 the appellant was receiving regular (remote) therapy sessions from a Dr Nora Pacheco, based in Caracas. She referred to further counselling that the appellant was receiving and concluded that the appellant has a long history of depression over a number of years.
6. It was noted that the appellant does not have any physical illnesses and is not “physically disabled”.
7. In order to give further context to this, the re-making of the decision on appeal, I quote from my error of law decision as follows:
 - “39. As the FtJ correctly identified that in order to be granted leave to remain the appellant must establish that she meets, in particular, paragraphs E-ECDR.2.4 and E-ECDR.2.5 of the Rules. Although not raised at the hearing before me, it appears to be the case that the appellant was permitted to make her application for ILR from within the UK without having first obtained entry clearance as an adult dependant relative because of the application of a policy by the respondent in relation to Covid-19.
 40. Paragraphs E-ECDR.2.4 and E-ECDR.2.5 provide as follows:
 - ‘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 -

(a) it is not available and there is no person in that country who can reasonably provide it; or

(b) it is not affordable.

41. As is clear from BRITCITS [a reference to *BritCits v The Secretary of State for the Home Department* [2017] EWCA Civ 368], an assessment of whether care can reasonably be provided, and what is the "required level of care" in a person's home country involves both what can be called a subjective element, and an objective one. Thus, at para 59 of that decision there is the following:

'Second, as is apparent from the Rules and the Guidance, the focus is on whether the care required by the ADR applicant can be "reasonably" provided and to "the required level" in their home country. As Mr Sheldon confirmed in his oral submissions, the provision of care in the home country must be reasonable both from the perspective of the provider and the perspective of the applicant, and the standard of such care must be what is required for that particular applicant. It is possible that insufficient attention has been paid in the past to these considerations, which focus on what care is both necessary and reasonable for the applicant to receive in their home country. 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.'

42. It is to be noted that the Court said that the considerations "are capable of embracing emotional and psychological requirements verified by expert medical evidence". I do not interpret the Court as saying that there is a requirement for expert evidence, but it may well be that without it it would be difficult to establish the subjective element.
43. Although the parties referred me to *Ribeli*, [a reference to *Ribeli v Entry Clearance Officer, Pretoria* [2018] EWCA Civ 611] it is a case decided on its facts. What is apparent from that decision is that the test for meeting these particular requirements of the Rules is a

demanding one (see paras 43 and 56 of *Ribeli*), as Ms Ahmed pointed out in her submissions.

44. I have given a detailed summary of the Ftj's decision and her consideration of the evidence, which in many respects was commendably thorough.
45. However, although the Ftj cited *BRITCITS*, I cannot see in her analysis of the evidence that there is any consideration of the subjective element in relation to E-ECDR.2.5, as explained in *BRITCITS*. Para 29a of the Ftj's decision rejects what is said to be subjective opinion, and focusses instead on the availability of care and treatment in Venezuela. For that simple yet important reason I am satisfied that the Ftj erred in law in her assessment of paragraph E-ECDR.2.5.
46. Is that error of law such as to require the Ftj's decision to be set aside? Not every error of law does require the decision to be set aside, as the parties will be aware. I raise this expressly, although it was not mentioned by the parties, because there remains, for now at least, the Ftj's conclusion in relation to paragraph E-ECDR.2.4, with permission having been refused to challenge that aspect of her decision. I note, incidentally, that although the Ftj quoted the paragraph correctly, in her analysis she only referred to the need for 'long-term care', omitting the word 'personal'. However, whatever the implications of that omission on the facts of this case, it does not advantage the appellant in terms of whether the Ftj's decision should be set aside, given the limitation on the grant of permission.
47. I did not understand Ms Ahmed to have argued that regardless of whether the Ftj had erred in the subjective element of the assessment, the appellant could not succeed in the appeal because of the Ftj's conclusion that the appellant had not established that she needed long term personal care to perform everyday tasks (E-ECDR.2.4).
48. Nevertheless, regardless of the limitation of the grant of permission, I am satisfied that the error of law in relation to the analysis of E-ECDR.2.5 does affect the decision as a whole. That is for two reasons. Firstly, E-ECDR.2.5 refers to "the required level of care". That care must necessarily refer to the "long-term personal care" in E-ECDR.2.4. It seems to me that in this case, the error in the analysis E-ECDR.2.5 must reflect on the conclusions in relation to E-ECDR.2.4. Secondly, the extent to which an appellant is able to meet the requirements of the Rules is relevant to an Article 8 assessment.
49. In case there is any doubt about whether there is any evidence of the need for personal care, it is to be found in the GP records and in the report of Dr Pacheco, for example, but not limited to, the information under the subheading "Current illness" which refers to the appellant's difficulty in performing "usual tasks", tendency to stay in bed till noon and "no interest in personal hygiene and looking after herself". The Ftj did make some reference to this aspect of the evidence in her decision but not in her analysis of E-ECDR.2.4.

50. I do not suggest that the evidence as it stands in relation to personal care required for everyday tasks will necessarily be sufficient to establish that the appellant meets the requirements of paragraph E-ECDR.2.4 in any further hearing, but it is a matter that will need to be considered.

51. In summary, I am satisfied that the FtJ erred in law in her decision, as explained above, such as to require the decision to be set aside.”

8. At the resumed hearing for the remaking of the decision the question was canvassed as to what findings of fact from the FtJ's decision could be preserved, as foreshadowed in my directions in the error of law decision. For ease of understanding, I have set out the preserved findings below in the reasons part of my judgment.

The oral evidence

9. The appellant and her daughter, the sponsor, gave oral evidence before me. The following is a summary of their evidence.

10. The appellant gave evidence with the assistance of a Farsi interpreter. She adopted her earlier witness statements in examination-in-chief. In cross-examination she confirmed what is in her most recent witness statement, namely that there are occasions when she lacks the motivation to get out of bed. Not because of laziness but because she feels no hope.

11. The medication she is receiving at present is a tranquiliser, a calming medication for her nerves. She said that she also has the ailments of age, for example high blood pressure but her medication is mainly towards her anxiety. She is not sure of the name of the medication but thinks that it is promethazine.

12. When her medication wears off the thoughts and feelings tend to return. The dose of medication that she took for sleep was very high but it has changed recently to “half of one and half of the other”. The new medication upset her stomach which is why they lowered the dose. They have not tried to alter the medication so that it works for a longer period of time to control her symptoms.

13. The medication helps her to sleep. After a short period there is numbness and she sleeps. When she wakes up she feels extra drowsy and druggy and she has to motivate herself that she has something to live for. Her daughter also helps her a lot.

14. The appellant was referred to evidence given to the FtT to the effect that she does gardening and cooking. In relation to that evidence the appellant said that her daughter talks to her and tries to motivate her to do things and to come downstairs. She said that she had never claimed that she has a physical disability. She is quite physical and able to do

things at her own pace considering her age. She goes downstairs and makes something for herself.

15. The medication is for her nerves and anxiety and gives her hope. She sees the face of her daughter encouraging her to do things and to live on. The medication physically numbs her and she becomes extremely inactive.
16. As regards her daughter Ronak, she speaks to her once a week. She is closer to some of her four children than others. Ronak does not have a partner. She is in the USA. Her eldest daughter, Pooneh, who lives in the USA, has cancer and Ronak went there and has been in the USA for a year. Prior to that she lived in Venezuela. She went to the USA to help Pooneh. Ronak had a small apartment in Venezuela, but she locked it up and went to the USA. The apartment is still there.
17. The appellant confirmed the evidence in her witness statement that Ronak has also had a cancer scare as a result of a lump in her breast. She needs another biopsy, but she has not said anything else to her as she may not want to worry her too much.
18. Pooneh has a husband who is a heart specialist. As to why Pooneh needs her sister Ronak there if she has her own family and her husband is a doctor, the appellant said that both Pooneh's breasts are affected and Ronak has gone to help. Pooneh's husband works and she, the appellant, cannot go to the USA. Pooneh's treatment is not finished. She is having chemotherapy at the moment.
19. As to why Ronak is unable to provide her, the appellant, with emotional and physical support in Venezuela, the two of them cannot spend even one hour in a room together. Ronak has her own world.
20. In relation to her UK daughter's witness statement of November 2022 stating that there is a moral and family obligation to look after her, and why that does not apply to Ronak, the appellant said that children are different and Ronak leans very much towards her father. However, she does not hold it against her that she has a relationship with her father (the appellant's ex-husband).
21. It is true that before she came to the UK she spent time in the Philippines; nine months. Before that she was in Venezuela. She has no family in Venezuela. She is not one of those social people who has a great circle of friends. Her neighbour was a friend. It is true that on her original application form she referred to a couple of friends, Belsa and Mirna. Sometimes they exchange messages on WhatsApp such as "How are you?", but they have their own lives.

22. The accommodation in the Philippines is not there anymore. Ronak's accommodation in Venezuela was quite far from where she, the appellant, lived, but they both lived in Caracas.
23. The difference between her daughter in the UK and Ronak is that she and her UK daughter have a very strong emotional bond, but Ronak has always been quite distant, and bickers over the most petty things which would turn into arguments.
24. Before coming to the UK her main health condition was her nerves and psychological problems when her husband left her with four children. She had to see a therapist. It was very difficult in a foreign country where she was a young woman with four children on her own.
25. In Venezuela she had operations for kidney stones four times, but in the UK for that condition she only receives medication. She has had a cataract operation here.
26. In re-examination she said that her daughter in the UK encourages her and gives her hope. She comes into her room in the morning and asks her how she is and encourages her to go downstairs to make herself something to eat. She phones her just before she starts work, to remind her, and to ask her what she is doing. She tells her that she has had a shower and been to the toilet. She calls her from work to see how she is. She is alive because of her daughter. She is the force that keeps her going. She gives her faith and motivation.
27. At this point in her evidence the appellant became upset and distressed. She continued her evidence in stating that her daughter had cut down her working hours. She comes home at lunchtime on Thursdays and is with her then until she goes back to work on Mondays.
28. As to physical problems, she has a problem with her knee so she uses a walking stick (which she had with her in court). She said that since she realised that her daughter in the USA has cancer she has felt worse because she cannot go to her and see her. Her daughter in the UK that she lives with tries to fill the vacuum of the other children not being here. It would be impossible for her daughter to give her that encouragement over the phone or in messaging. The thought of it horrifies her and she is totally worried about it.
29. She is scared of being on her own at her age. She is not young any more so as to be able to busy herself with other things. She is 77 years old this month.
30. The sponsor adopted her witness statements in examination-in-chief.
31. She said that her mother, the appellant, is taking Sertraline 15mg and Mirtazapine 15-30 mg for her mental health. Normally she administers the

medication for her before she goes to bed. She also has 25 mg of levothyroxine for an underactive thyroid. She takes medication for kidney stones which includes 4 ml of citrus potassium suspension. For her blood pressure she sometimes has amlodipine. For knee pain she sometimes has codeine or co-codamol. For high cholesterol she has Lipitor. All these medications are taken on a daily basis.

32. In the morning she has a dosette box and in the evening she gives her the Sertraline. On each box what medication she has to take is written in case she is not there. She has also written it for the appellant on a piece of paper.
33. Her mother had been battling for a long time with mental health issues. She had been married and she and her father separated. Her daughters moved abroad. Since she has been in the UK her mental health has dramatically dropped. She has a fear of loneliness. She is unable to cope with things on a daily basis unless she is there.
34. Pooneh now has cancer and her mother's mental health has got worse. She, the sponsor, used to work Monday to Friday. Travelling to work and in between patients she would call her mother. Her husband works from home as an IT consultant. The news from Pooneh made her worse. There was so much stress for her at work that she decided to reduce her hours, as she had explained in her witness statement. She calls her several times a day to encourage her to get up and do her daily tasks until she gets back from work.
35. She could not do those things remotely if her mother was in Venezuela. Her physical presence (close to her mother) makes all the difference. She expects her to come back from work and be with her. Her mother needs her physical presence.
36. In cross-examination she said that her medication is kept under review. In the morning her mother takes all the medication and in the evening she administers it to her. She tries to make sure that she is being given the right medications. Her symptoms present as a rollercoaster, with ups and downs. She calls her mother during the day and helps her to stay positive. That is the only way that she pushes herself. Regardless of the medication, there are days of hopelessness for her. Physically she is there with her mother on a daily basis which motivates her. Before she leaves for work she checks that she is awake and makes sure that she is ok. If she is not ok she will call her whilst she is driving, between patients and at lunchtime.
37. Pooneh got her diagnosis of cancer in January 2023 and had surgery in May and October 2023. She had a bilateral mastectomy in May 2023. She is subject to observation over the next five years. Her chemotherapy has not finished and she is not sure when it will be.

38. Ronak went to the USA to be with Pooneh in May 2023. Unfortunately, she is unable to go because she has the appellant here. Ronak and her mother do not have a very good relationship. Ronak sides more with their father. Her mother has more of a relationship with her than with Ronak. They could not live together.
39. Asked whether she was saying that it was still necessary for Ronak to stay with Pooneh even though Pooneh has her own family, she said that Pooneh's children are at university and her husband works every day. Therefore Pooneh was alone so Ronak went to be with her whilst she finished her treatment. Ronak is also supporting her nieces and nephews emotionally when they come home for holidays. However, the main purpose of Ronak being there is in relation to the mastectomy and Pooneh's treatment. It is correct that Ronak still has a property in Venezuela.
40. As to her having referred to a moral and family obligation to look after her mother, she is not saying that Ronak does not qualify in that respect. When she used to live in Venezuela herself, her dental practice was next to her mother's carpet shop. Her relationship with her mother was different from Ronak's. Basically, they do not get on. Her mother needs to be secure and in a safe environment and a place where arguments will not arise.
41. At this stage there was no re-examination. In answer to questions from me, she said that Ronak has applied to stay in the USA for longer and has a work permit. She does not know how long she will stay but she knows that she is not going back to Venezuela. Ronak is a paediatrician and immunologist. Now she has a USA work permit.
42. If she did not give her mother encouragement she is sure that she would be so depressed she would be confined to bed with no hope of anything to look forward to in order to make her get out of bed.
43. As regards toileting and showering, there are days when she encourages her and she is okay; has a shower and gets her own breakfast, for example over the weekend. On low days she has to tell her to take a shower and make her feel better. The main thing is not to do with her physical care. It is her mental health problems. The only thing her mother has left in her life is her.
44. She can only do everyday tasks because she is physically there with her mother. She knows that she is not alone and that she is there with her. She does not know what would happen if she was not there.
45. In answer to further questions from Mr Behbahani, the sponsor said that if, hypothetically, she had to go urgently to her dental practice without being able to contact her mother, she would absolutely not be able to cope. The only way she copes is because she knows that she is

there. It is the only hope that she has of continuing to live on a daily basis. Her psychological care is part of her personal care.

The parties' oral submissions

46. The following is a summary of the parties' submissions. Mr Clarke accepted that it was probably the case that the appellant was permitted to make an in-country application for leave to remain because of Covid-19, otherwise the application would have to have been made outside the country.
47. Mr Clarke relied on the decision letter although accepted that it was not particularly helpful. No issue arose in relation to the financial aspect of the Rules. It was submitted that on the evidence the appellant is not able to meet paragraphs E-ECDR.2.4 and E-ECDR.2.5. The latter Rule is parasitic on the former, it was submitted. Mr Clarke suggested that one had to be careful not to find erroneously that paragraph E-ECDR.2.5 can lower the threshold purely on the basis of reasonableness.
48. The "required level of care" is only met if the requirements of paragraph E-ECDR.2.4 2.4 are met, it was submitted. In that respect Mr Clarke relied on *BritCits v Secretary of State for the Home Department* [2017] EWCA Civ 368 at para 59. If the appellant cannot meet paragraph E-ECDR.2.4, she cannot meet E-ECDR.2.5.
49. It was also submitted that there were evidential requirements to be met in paragraphs 34 and 35 of Appendix FM-SE of the Rules in terms of independent medical evidence relating to the performance of everyday tasks. *BritCits* at para 8 refers to the policy intent as to tasks such as washing, dressing, cooking, as described in the Home Office guidance. The situation has to be quite bleak. It was submitted that the evidence in this case does not come close to meeting the requirements of the Rules.
50. It was accepted that both the appellant and the sponsor appeared to be credible witnesses and could have put forward a more robust case, but they had provided a nuanced view. Throughout the evidence reliance was placed on the appellant's mental health rather than any physical impairment. The highest the case could be put was in terms of motivation and the Rules do not envisage that.
51. As regards Article 8 outside the Rules, although there was family life between the appellant and the sponsor which has strengthened over the last three to four years whilst the immigration litigation was continuing and the medical evidence says that their relationship is crucial to maintaining the appellant's mental health, there is very little in the medical evidence which addresses alternatives.
52. Although Pooneh has been ill since last February, she is near the end of her treatment and will need observation for the following five years. She

is married to a heart specialist and she has two children at university. It was submitted that there was a degree of inconsistency in Pooneh's witness statement in terms of saying that Ronak supports Pooneh's children, and she does not say that Ronak has a work visa.

53. Ronak still has a property in Venezuela, and her witness statement which is only dated last month does not say that she plans to sell it. The evidence is that Ronak is not able to provide the appropriate emotional bond and there is the question of reasonableness under the Rules, but that only arises if the requirements of paragraph 2.4 are met. It does not arise in a proportionality assessment, it was submitted.
54. It was clear that Ronak feels a moral obligation to Pooneh and there is no reason, therefore, why she should not feel the same in relation to the appellant. It appears to be a matter of choice as to how care is given to the appellant. The public interest needs to be considered.
55. As regards the *fait accompli* scenario described in *Mobeen v Secretary of State for the Home Department* [2021] EWCA Civ 886 at para 70, it was accepted that the fact that the application was made during the Covid-19 pandemic makes that argument on behalf of the respondent rather difficult. The appellant arrived in the UK as a visitor but was prevented from leaving because of Covid. Nevertheless, over a period of time one is now presented with a case of the gravity that it is. Mr Clarke submitted that when all that is taken into account, the public interest outweighs the rights of the appellant.
56. There are the adult dependant Rules to consider, it was submitted, and the cost to the public purse in terms of the many issues that go beyond the appellant's mental health, and taking into account her age.
57. Mr Behbahani adopted his skeleton argument. He submitted that if paragraph E-ECDR.2.4 only related to physical health it would say so. There was uncontested evidence and it would be wrong to ignore the elements of psychological care that the appellant needs. The appellant has been battling with mental health problems for many years according to the evidence, including the medical reports.
58. Mr Behbahani took me to the requirements of the Rules in E-ECDR.2.4 and E-ECDR.2.5, as well as paragraphs 34 and 35 of Appendix FM-SE. It was submitted that the appellant's ability to do everyday tasks is provided by the psychological care given by the sponsor. In answer to the hypothetical question of what would happen if the sponsor was not there, the sponsor's evidence was that the appellant would not be able to cope, and the medical evidence says the same thing.
59. It was submitted that *BritCits* points to the requirement to look at all the relevant factors as to how the adult dependant relative application has arisen. Mr Behbahani suggested that there was no reason to doubt the

credibility of the appellant or the sponsor. There was no embellishment of their evidence in areas where one might have considered that it could arise. It was submitted that it was difficult to see what other evidence could have been provided. All the indicators are that without the sponsor in the UK the results would be catastrophic.

60. Mr Behbahani further submitted that personal care can include encouragement and motivation to undertake everyday tasks, otherwise the Rules would be discriminating against those with severe mental illness.
61. As regards Article 8 outside the Rules, there is no alternative to the current situation in terms of persuading Ronak and the appellant somehow to put up with each other, which is contrary to the evidence.
62. As to what appears to the respondent's argument that reasonableness should not come into play when considering Article 8 outside the Rules, with reference to *Mobeen*, I was invited to reject that argument. In addition, *Mobeen* could not have foreseen the situation of Covid and the guidance allowing an application from within the UK. It was submitted that this was not, therefore, a *Mobeen*-type case.

Assessment and conclusions

63. As canvassed with the parties, there are certain findings of fact from the FtJ's decision that can be preserved. I have, however, given further consideration to the FtJ's decision in terms of preserved findings and included additional findings that were not canvassed with the parties at the hearing. However, they are uncontroversial matters and are not inconsistent with my conclusions as to the error of law in the FtJ's decision.
64. The preserved findings are as follows.
 - a. There is family life between the appellant and her daughter, the sponsor.
 - b. The appellant is diagnosed as suffering from major depressive disorder, anxiety and insomnia and has a long history of depression over a number of years.
 - c. The appellant has been treated for her mental health with regular prescribed medication, therapy sessions with Dr Nora Pacheco between July 2020 and 30 August 2022, has had a meeting with a senior counsellor Mahtab Kafi with agreement on the need for further counselling, and has received counselling from Zolaykha Gholipour of the Middle Eastern Women and Society organisation.
 - d. Medical treatment is available for the appellant in Venezuela and her UK daughter has sufficient funds to pay for that treatment.

- e. There is an emotional connection between the appellant and her daughter in the UK, and living with her daughter has a positive impact on the appellant's mental health.
- f. The appellant does not speak English. She is not a burden on taxpayers. She is provided for financially by her daughter in the UK.
65. Before me there was no challenge to the evidence of either the appellant or the sponsor. On the contrary, Mr Clarke accepted that the appellant and the sponsor appeared to be credible witnesses, and indeed could have put forward "a more robust case".
66. I agree. There was abundant scope for embellishment of the evidence by the appellant and the sponsor. An example is in relation to the appellant's purely physical abilities. It was accepted by both of them that the appellant is *physically* able to perform daily personal and other tasks. Indeed, as the FtJ noted at para 24 e., on the appellant's own account she is able to cook and garden on a daily basis and she does that unsupervised. Their evidence was to like effect.
67. Similarly, of some significance in this respect is the evidence that the appellant gave of the medication she is taking. The only medication that she referred to was promethazine. However, it is clear that she did not remember that she was receiving a number of other medications, as stated in the sponsor's evidence. Her evidence was given in an honest and transparent manner, without guile.
68. I found their evidence to be free from embellishment or overstatement and I am satisfied that they both gave credible written and oral evidence.
69. Accordingly, I am satisfied that the sponsor gave credible evidence that since the appellant has been in the UK her mental health has declined and she is unable to cope on a daily basis unless the sponsor is there. She also gave credible evidence that she has reduced her working hours in order to spend more time with the appellant.
70. Her evidence, which I also accept, is that if she did not give her mother encouragement she is sure that she would be so depressed she would be confined to bed with no hope of anything to look forward to in order to make her get out of bed, and that she can only do everyday tasks because she is physically there with her mother. She said that the appellant's psychological care is part of her personal care.
71. In her witness statement dated 21 February 2024, which she adopted in examination-in-chief, the appellant states at para 4 that:
- "If I was to be asked as to whether I would be able to cope in carrying out everyday tasks such as those which relate to my personal care needs, without my daughter's help and support, I would answer this question with a big fearful no."

72. In the next paragraph she states that:

“[T]here are occasions when I am just simply completely unable to even get out of bed or have even the slightest bit of positive thought or energy and these occasions become more and more apparent in my life as I really and truly fear and dread the day that I may once again be separated from my daughter. With the ongoing health issues relating to my other two daughters, and this ongoing uncertainty regarding my own situation, I am really struggling to find any cause to be positive or want to continue life in the way that it is. However, my daughter is always there for me and is always there to push me, support me and effectively help me to overcome these painful emotional sufferings.”

73. Putting aside for the moment the question of whether the appellant’s other daughter, Ronak, would be able to provide the same level of care for the appellant in Venezuela, the fact is that Ronak is in the USA. She has gone there to be with their sister Pooneh who has had surgery for breast cancer, is receiving chemotherapy and is to be under observation for five years.

74. On behalf of the respondent the implicit, if not explicit, suggestion was that Ronak did not really need to be with Pooneh in the USA since Pooneh has a medically qualified husband and has two children. Nevertheless, the uncontested evidence that Ronak is in the USA and is not in Venezuela to assist the appellant should she return. For the avoidance of doubt, I do not consider that Ronak being in the USA is a contrived scenario in order to bolster the appellant’s appeal.

75. In her latest witness statement Pooneh, in addition to describing the treatment she has had and is having for her breast cancer, and the effect that has had on her family in the USA and on the appellant, states at para 7 that Ronak came to live with her in May 2023. She says that:

“Her [Ronak’s] selfless sacrifices have been immeasurable, providing invaluable care and support not only to me but also to my children. Her presence has proven indispensable, offering both emotional and practical assistance, enabling me to prioritize my health and focus on my recovery journey. Without her help, and indeed her ongoing support, I would unequivocally be unable to cope.”

76. Although the evidence is that Ronak still has her own accommodation in Venezuela, she is not there. Ronak’s most recent witness statement dated 21 February 2024 does not refer to her having obtained a work permit in the USA. That was the sponsor’s evidence given in answer to my question asking how long Ronak would be staying in the USA. She said that she would not be returning to Venezuela, and that given that she has a work permit she assumes that she will apply for employment in the USA. Although not part of her evidence, during the course of submissions Mr Behbahani was able to take instructions from the sponsor that the work permit was only granted last week. The latter is not evidence, but the

sponsor's evidence of the fact of the work permit was not contested. As I have already indicated, I am satisfied that both the appellant and the sponsor gave credible evidence.

77. I set out the terms of the relevant paragraphs of the Rules in the error of law decision at para 40 (and as reproduced at para 7 above). The relevant Rules are E-ECDR.2.4 and E-ECDR.2.5. No other aspect of the adult dependant relative Rules is in issue.

78. I am satisfied that the evidence establishes on a balance of probabilities that the appellant, as a result of illness requires long-term personal care to perform everyday tasks. The illness that the appellant suffers from is mental illness and about which there is no dispute, and is a preserved finding. The long-term personal care that she requires is the personal care provided by the sponsor in all the ways that have been described in terms of encouragement, motivation and daily support. I am satisfied that the sponsor gave credible evidence that without that personal care the appellant would not be able to perform those everyday tasks such as getting up in the morning, showering, dressing and feeding herself.

79. There is no reason in principle why "personal care", within the Rules should not include personal care of the sort that the sponsor provides in order for the appellant to be able to perform everyday tasks. I referred at para 49 of the error of law decision (quoted above) to the medical evidence on this issue. I reproduce it again here for convenience:

"In case there is any doubt about whether there is any evidence of the need for personal care, it is to be found in the GP records and in the report of Dr Pacheco, for example, but not limited to, the information under the subheading 'Current illness' which refers to the appellant's difficulty in performing 'usual tasks', tendency to stay in bed till noon and 'no interest in personal hygiene and looking after herself'."

80. I am satisfied, therefore, that paragraph E-ECDR.2.4 is met.

81. As regards E-ECDR.2.5, the issue in this case is not about the availability of treatment or care in Venezuela, as a general matter. It is accepted by the appellant and sponsor that there is treatment in Venezuela for mental health conditions of the sort that the appellant suffers from. Similarly, it was not argued that personal care could not, as a general matter, be provided.

82. The point in this case is that the strong emotional bond between the sponsor and the appellant, and the support that the sponsor provides, is crucial in ensuring that the required level of care is met. As explained in *BritCits* at para 59 (quoted above), there is a subjective element to E-ECDR.2.5. in the "required" level of care and in terms of whether it can "reasonably" be provided.

83. On the facts as I have found them, the required level of care cannot be provided in Venezuela. The appellant is unable to obtain the required level of care because what the sponsor provides is self-evidently not available in Venezuela and there is no person in that country who can reasonably provide it.
84. As I have found, there is credible evidence that the appellant's daughter Ronak, who used to live in Venezuela, now lives in the USA. The evidence establishes that it is likely that she will not be returning to Venezuela.
85. In the light of the above findings it is not necessary for me to express a view as to whether Ronak could provide the required level of care for the appellant, instead of the sponsor, were Ronak still to be in Venezuela. However, on the basis that I am satisfied that in all respects both the appellant and the sponsor gave credible evidence, I would not be satisfied that that care could be provided by Ronak given the evidence of their relationship, as compared to the relationship between the appellant and the sponsor.
86. Mr Clarke referred to the fact that there are evidential requirements under Appendix FM-SE of the Rules relating to adult dependant relative applications, specifically at paras 34 and 35. It was not submitted, however, that the appellant does not meet those evidential requirements. Those paragraphs of the Rules applied at the time of the appellant's application, although they are no longer part of the Rules. Paragraph 34 of Appendix FM-SE, to summarise, requires medical evidence from a doctor or other health professional in relation to paragraph E-ECDR.2.4. Paragraph 35 requires independent evidence from a central or local health authority, a local authority or a doctor or other health professional in relation to E-ECDR.2.5.
87. That specified evidence in relation to both E-ECDR.2.4 and 2.5 has been provided in the evidence of, for example, Dr Nora Pacheco in her report dated 25 March 2021. She states in the last paragraph that
- “Considering the perilous health situation in Venezuela and, since in Venezuela there is no person (family or relatives), who could provide long-term personal care to [the appellant] and because not only my patient cannot have access to any of these promising treatments mentioned before in her own country, but her persistent disorder also (acute depression) can worsen over time and I am afraid there will be catastrophic consequences to her mental illness. As mentioned before, she has been suffering from acute treatment resistant depression to such an extent she can no longer look after herself particularly by reference to her everyday care needs as well as the fact that the level of emotional dependency is over and above the norm or the norm which one would expect between a mother and her daughter [the sponsor].”
88. In the next paragraph she states that

“...most importantly the fact that she has to be looked after 100% by her daughter [the sponsor] as she has become wholly dependent on her, [the appellant] is unable to care for herself in respect of her daily needs, it is not reasonable to seek third party care.”

89. The updated report from Dr Pacheco dated 20 February 2024 states that:

“Consequently, I maintain the perspective that all conceivable measures should be pursued to sustain her current living arrangement with her daughter [the sponsor] in the UK. Separation from [the sponsor] is anticipated to have catastrophic and irreversible consequences on Mrs. Moghadam's mental health...”

90. The report from Dr Shahin Nejad, a psychotherapist, dated 23 February 2024, is to the same effect.

91. In all the circumstances, I am satisfied that the appellant has established on a balance of probabilities that she meets the requirements of the Rules for leave to remain as an adult dependant relative, in particular with reference to paragraphs E-ECDR.2.4 and E-ECDR.2.5.

92. It is worth stating, however, that my conclusions in this case should not be interpreted as meaning that I am of the view that in any case where there is family life between adults and an overwhelming desire on their part not to be separated, the requirements of E-ECDR.2.4 and E-ECDR.2.5 would be met. That is not my view. I recognise, as stated in *Ribeli*, that the requirements of the Rules in this respect are rigorous and demanding. It is the particular facts of this case that have led me to conclude that the requirements of the Rules are met.

93. It is also right that I should say something about what may be called the *Mobeen* point, i.e. the relevance of the respondent being presented with a *fait accompli*, where a person applies for leave to remain after a period of time in the UK and where the person's circumstances have become such that a case for further leave to remain under Article 8 has gained some traction. The public interest in those circumstances is relevant to the proportionality assessment.

94. Mr Clarke was right to approach that issue in this case with a degree of hesitation. There has been no suggestion in this case that the appellant has sought to circumvent the Rules, as was the case in *Mobeen*, as can be seen at para 70 of that decision. It appears that this appellant was permitted by Home Office policy to make her application for leave to remain whilst in the UK because of the Covid-19 pandemic which prevented her return to Venezuela, in contrast to the usual requirement for an adult dependent relative to make an application for entry clearance from outside the UK.

95. In any event, the public interest question that arises in such circumstances does not arise in this case given that I am satisfied that the appellant meets the requirements of the Rules.
96. In the light of my having found that the Rules are met, it is not necessary for me to consider Article 8 outside the Rules as an alternative assessment to my conclusions under the Rules. That would be an artificial exercise in this case. On my findings, there are no alternative scenarios under Article 8 which would require consideration of the extent to which the appellant meets the requirements of the Rules.

Decision

97. The decision of the First-tier Tribunal involved the making of an error on a point of law. Its decision having been set aside, the decision is re-made, allowing the appeal.

A. M. Kopieczek

Judge of the Upper Tribunal
Immigration and Asylum Chamber

3/06/2024