IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004402
First-tier Tribunal No: HU/59862/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

14th February 2024

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN

Between

NADIA ALMERIE
(NO ANONYMITY ORDER MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the Appellant: Ms R Francis, Counsel, instructed by Kalsi Solicitors
For the Respondent: Mr A Tan, Senior Presenting Officer

Heard at Manchester Civil Justice Centre on 6 February 2024

DECISION AND REASONS

Introduction

1. At the outset it is appropriate for this Tribunal to observe that the First-tier Tribunal decision is well-structured and clearly prepared with considerable diligence. The grounds of appeal prepared by Ms Solanki, Counsel, proved to be of real aid to this Tribunal. The short, clear submissions of both Ms Francis and Mr Tan were on point, and exemplary.

2. This is a matter where the pulling of one thread results in the unravelling of what on its face initially appears to be a well-reasoned decision. Ultimately, the failure to address one issue raised by the appellant before the First-tier Tribunal establishes a material error of law. The pivot in this appeal is that required reasoning is missing, and this Tribunal cannot with certainty identify how the Judge would have addressed the point advanced by the appellant. As accepted by Mr Tan it is not possible to divorce the material error from other findings made, and so the entirety of the decision is properly to be set aside save for a concession made by the respondent at [8] of the decision. Ms Francis did not demur from this approach.

First-tier Tribunal Decision

3. The appellant appeals with permission a decision of Judge of the First-tier Tribunal Woolley sent to the parties on 10 July 2023. The underlying challenge by the appellant before the First-tier Tribunal is to the refusal of an entry clearance application under the Immigration Rules concerned with adult dependant relative. The appeal is brought on human rights (article 8 ECHR) grounds.

4. The appellant is a national of Syria and is presently aged 67. By a decision dated 24 November 2022 the respondent decided in respect of Section EC-DR:

> "I am satisfied that you can meet the requirements of E-ECDR.2.1 to E-ECDR.2.3.
>
> You do not meet the requirements of E-ECDR.2.4 & E-ECDR.2.5 for the following reasons:
>
> In support of your application you have provided medical letters from Dr Yanal Saaid and Dr Abdulrahman Alselo of the Syrian Physicians Syndicate. These letters state that you suffer from depression, insomnia, panic attacks and osteoarthritis. While this has been taken into account I am not satisfied it confirms that you require long term personal care to perform everyday tasks. Therefore you do not meet the requirements of E-ECDR.2.4.

> As mentioned above you have not demonstrated that you require specific care to perform everyday tasks. The medical letters provided confirm that you are receiving the required level of healthcare and medication in Syria. Nothing suggests that this is going to change and moving forward you will no longer able to obtain this. Therefore you do not meet the requirements of E-ECDR.2.5."

5. The respondent further decided that no exceptional circumstances arose.

6. By a detailed skeleton argument dated 28 June 2023 (and 4 July 2023) the appellant observed:

> "14. She provided medical evidence showing she suffers with serious physical and mental health issues which are impacting on her ability to care for herself and that she needs care from her children (RB 47-49).
>
> 15. She cannot make and attend appointments herself (AB 2). She is unable to get the medicine she is prescribed in Syria (AB 3). **She has to travel for two hours to Qamishli to see a doctor** and has no access to a GP (AB 2-3). A cannot go to the shops owing to her arthritis and pain, she cannot walk far, she has low energy, she is unable to clean, she struggles to cook and gets tired standing for longer periods, her eating habits are poor owing to her health. She cannot dress or wash herself. She has previously been burgled. She is living in fear (RB 44). It is not culturally acceptable to turn to a carer but they are unavailable in any event in Syria (RB 45).
>
> ...
>
> 27. A medical letter dated 22 March 2022 by Dr Yanal Saaid, Neurologist at Syrian Physician Syndicate, Alhasaka branch says A suffers from low mood, depression, panic attacks, insomnia and osteoarthritis. She is lonely and the separation from her children worsens her condition and is stopping her from responding to therapy and medicines. She needs to be in her children's care. The arthritis makes serving herself something for herself impossible. (RB 49). **Another medical letter dated 22nd March 2023 by Dr Abdulrahman Alselo, Cardiologist, says A has been visiting their clinic for five years suffering from Hypertension and Cardiac Ischemia, she was submitted to cardiac catheterization on 9 March 2022 at Al Nour hospital in Kamishli, Syria, she needs permanent drug therapy along with medical care as she is a heart patient and she requires three monthly reviews** (RB 47)."

...

29. The sponsor further gives evidence in his statement as to the ongoing care his mother needs in his statement dated 4 July 2022 (AB 267-270) as follows;

...

19. **The hospital and doctor are very far away and so she hasn't been able to visit them since my father died unless pre-arranged with my sister. If there was an emergency there would be no one there to get her medical treatment. She is in a very vulnerable position**."

[Emphasis added]

7. At [8] of his decision the Judge records two concessions made by the respondent:

- The appellant suffers from the medical conditions identified in the evidence, and
- She lives in a region of Syria properly to be considered as one where an ordinary civilian would be at risk of "Article 15(c) harm".

8. In respect of the adult dependent relative rule, the Judge concluded:

"25. Applying the guidance in *Ribeli* - "the standard of such care must be what is required for the particular applicant" – I find that the daughter in Syria (in combination with the brother if necessary) would be able to offer an adequate level of care for the appellant. Qualification under EC-DR 2.5 is "rigorous and demanding". Even if the evidence is taken at its highest the appellant does not need specialised care for her day-to-day living, but assistance in respect of provision of food, washing and dressing. I find that E-ECDR 2.5 is not satisfied."

9. As to article 8 outside of the Immigration Rules, having undertaken a balancing assessment the Judge concluded:

"38. On the facts and evidence provided in this particular case, and applying the guidance in *KF* and *Agyarko* I find that the refusal of entry clearance is proportionate. Giving appropriate weight to the public interest and the fact that no family and private life has been developed while the appellant has been in the UK, I find that the strength of the public interest in these particular circumstances outweighs the rights of the sponsor and appellant under Article 8. I find that the objective of the

> measure (namely the refusal of entry clearance in the interests of legitimate immigration control) is sufficiently important to justify the limitation of any private and family life rights of the sponsor and appellant, and that the measure of refusing the application is rationally connected to the objective of legitimate immigration control in the economic interests of the UK. A lesser measure could not have been used. I find that the importance of legitimate immigration control outweighs the rights of the sponsor and appellant which I have summarised above. Applying the balance sheet approach, it is clear that the countervailing factors do not outweigh the importance attached to the principle of legitimate immigration control. The sponsor has not produced a "very strong or compelling case" (per *Agyarko*) so as to outweigh the public interest in refusal of entry clearance to the appellant. Adopting the formulation at paragraph 60 of *Agyarko* I find that there are no circumstances in which refusal would result in unjustifiably harsh consequences for the sponsor such that the refusal of the application would not be proportionate. I have also found that if GEN 3.2 is considered the conclusion would be that there is no breach of Article 8 because the refusal would not result in unjustifiably harsh consequences for the sponsor and appellant."

Discussion and Reasons

10. The appellant relies upon detailed grounds of appeal running to six pages. Individual challenges are advanced to the Judge's decision in respect of article 8 inside and outside of the Rules. Permission to appeal was granted by Upper Tribunal Judge Sheridan by a decision sent to the parties on 2 January 2024.

11. The focus of the hearing was upon the following contention, identified at para. 5 of the grounds of appeal:

> "b. Secondly, there has been absolutely no consideration of the evidence before the FTT on the difficulties in obtaining care in an emergency. The Sponsor's evidence said 'When there are really serious problems they have to go and see a doctor in another city called Qamishli that is quite far away from my mothers' place. … It is 2 hours each way and 2 or 3 hours waiting at the doctors and this is exhausting for her. … Most of the doctors are on the 2nd or 3rd floor of the building and there is no lift. Mother's legs are swollen and she cannot breathe properly and her blood pressure is very high so she struggles with the stairs and it takes her a long time to make her way up and down the stairs especially with her knee pain' (AB 2-3). The A is an individual who on the accepted medical evidence is said to have panic attacks, depression, osteoarthritis, hypertension and cardiac ischemia. The ignorance of this evidence shows a

failure to consider and apply *Britcits v SSHD* [2017] EWCA Civ 368 which held at para 59 that 'considerations include issues as to the accessibility and geographical location of the provision of care.'

c. Thirdly, whilst the IJ says he has noted the country evidence, it is submitted he has failed to consider the significance of this and the detail within this evidence in his assessment of the claim on this issue. The R's own Country Policy and Information Note on the Humanitarian Situation said at 4.5.2 and 4.5.4 that 'The fragile health system in Syria continues to face concurrent emergencies and chronic challenges which affect the availability and quality of health services across Syria', 'each area faces public health emergencies caused by insufficient and unevenly distributed health facilities, critical shortages of qualified, specialized health care workers, and lack of reliable and affordable access to medical equipment and supplies, especially medications. Women, girls, and people living with disabilities are disproportionately impacted by lack of access'. Other objective evidence showed poor infrastructure, lack of electricity and poor WASH conditions in health care facilities, overcrowding, long waiting times, procurement of correct medication and unaffordable treatment costs, the cholera outbreak and water crisis as real difficulties in accessing adequate health care (AB 34, 117, 121. 132). As per §59 of the judgment in *Britcits* the IJ had to look at the 'standard of care' in Syria in considering whether 2.5 was made out. He has failed to do this."

12. The target of this challenge is [21] of the decision:

"21. I have been referred to the general country point that there is deprivation in the Al Hasakeh governorate in terms of food and healthcare security. I take notice of this country evidence, but any assessment must also factor in the specific evidence relating to this appellant as produced by the appellant and sponsor. As *Ribeli* pointed out it is reasonable for the respondent to ask for clear evidence on what exactly was happening on a day-to-day basis in the Appellant's life. I find that the medical evidence produced contradicts the suggestion that the appellant is not receiving adequate care for her medical conditions. **She is being reviewed every three months for her heart conditions by Dr Alselo (contrary to the sponsor's statement that there are no regular check-ups for the appellant). She has been under him for five years. She has undergone heart catheterisation in hospital (on 9th March 2022)**. Dr Saaid as a neurologist has reviewed her and is from the Al Hasakeh branch of the Syrian Physician syndicate – there is no evidence that Dr Saiid will not remain available to treat her. She needs permanent

> drug therapy but the sponsor confirmed in evidence that she had access to a local pharmacy and that medication was delivered to her either by a local taxi driver or by his sister. There is no evidence that alternative medication is not adequate for her (if it was the two medical witnesses could have been expected to say so). **The sponsor in his statement confirms that when she has serious problems she is able to see a doctor in Qamishli city – generally travelling there by taxi. On all the evidence, and in spite of the general country evidence, I find that for this particular appellant there is an adequacy of health treatment in Al Hasakeh governorate.**"
>
> [Emphasis added]

13. I am satisfied that the last two sentences of [21] fail to engage with the appellant's case. Both in her skeleton argument and at the hearing, the latter agreed by Mr Tan having read a note from the Presenting Officer who attended before the Judge, the appellant was relying upon the real difficulties in securing emergency hospital treatment as someone accepted by the respondent to have a heart condition. By implication, this is treatment where timely intervention may save her life. I have considered whether 'serious problems' is sufficient to establish that the appellant's contention was addressed but conclude that it does not. The Judge was being asked to address the impact of the availability of travel to a hospital in an emergency, whether in securing a taxi or being driven by family members, where the journey would take two hours, and where she may not have ongoing health care during the journey. Whilst a judge could reasonably consider as to whether sufficient evidence had been filed as to the lack of paramedic or medical care, or consider alternatives, this important contention advanced by the appellant had to be adequately considered, even if in brief, cogent terms. The starting point had to be the nature of the appellant's accepted health condition.

14. As observed at the outset of this decision, the picking of one thread unravels the decision, due to there being a failure to consider a central element of the appellant's case. The failure adversely flows into the consideration of the adult dependent relative rule and further into the proportionality assessment outside the Immigration Rules. As accepted by Mr Tan the decision is properly to be set aside.

15. I have considered the respondent's concession recorded at [8] of the decision. It is appropriate to preserve the concession accepting the appellant's medical condition as evidenced by medical experts.

16. In respect of Article 15(c) harm, this is properly to be considered as at the date of a judge's decision, observing the current circumstances in a

country. I therefore do not preserve the concession, though both the respondent and the appellant will be mindful that the respondent's position will be identified in extant CPIN guidance at the date of the next hearing.

Remitted Hearing

17. Both representatives requested that the matter be remitted to the First-tier Tribunal. I observe the guidance in *Begum (Remaking or remittal) Bangladesh* [2023] UKUT 00046 (IAC). As the appellant has not to date enjoyed adequate assessment of a core element of her appeal, and so in the circumstances should not lose the first opportunity to present her case before the First-tier Tribunal, I consider it appropriate and just to remit this matter to the First-tier Tribunal.

18. It is not appropriate for the Upper Tribunal to case manage appeals before the First-tier Tribunal. However, noting a request from Ms Francis, I consider it appropriate to observe that this is a matter where expedition in listing the remitted hearing would be beneficial being mindful as to the appellant's health condition and the present circumstances in Syria. However, this is an observation and not a direction to the First-tier Tribunal.

Decision

19. The decision of the First-tier Tribunal sent to the parties on 10 July 2023 is subject to material error of law and is set aside.

20. No findings of fact are preserved, save for the respondent's concession at [8] that it is accepted that the appellant suffers "from the conditions described",

21. The appeal is remitted to the First-tier Tribunal sitting in Manchester to be heard by any Judge other than Judge of the First-tier Tribunal Woolley.

D O'Callaghan
Judge of the Upper Tribunal
Immigration and Asylum Chamber
8 February 2024