



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case Nos: UI-2023-005479  
UI-2023-005480  
First-tier Tribunal No: HU/52749/2023  
HU/52741/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

On 20<sup>th</sup> of June 2024

**Before**

**UPPER TRIBUNAL JUDGE SHERIDAN**  
**DEPUTY UPPER TRIBUNAL JUDGE METZER KC**

**Between**

**(Ms) MERVAT AL HAWAMDEH**  
**(Mr) ABDUSALAM ALNASSR**

Appellants

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Lamer, counsel instructed by Kidd Rapinet Solicitors  
For the Respondent: Mr Toufan, Senior Presenting Officer

**Heard at Field House on 10 June 2024**

**DECISION AND REASONS**

1. The Upper Tribunal (UTJ Sheridan) (“the UT”) issued its first decision in this appeal on 6 February 2024. A copy of that decision is appended to this one. The effect of that decision was that the decision of the First-tier Tribunal (Judge Sweet) promulgated on 16 November 2023 was set aside and the decision on the appeal was to be remade in the Upper Tribunal. No findings made by the First-tier Tribunal (“the FtT”) were preserved. The First Appellant is the Second Appellant’s mother and the sponsor is another son of the First Appellant.
2. The appeal came to be relisted before the panel as presently constituted.
3. We heard oral evidence from the sponsor whose evidence is summarised below. The Appellants applied for entry clearance under Appendix FM of the Immigration Rules to join the sponsor in the UK. The application was considered by the

Respondent under the adult dependent relative route and was rejected for a number of reasons including that it was not accepted that the conditions in subparagraphs E-ECDR.2.4 and E-ECDR.2.5 were satisfied. The UT found that the FtT made material errors of law in relation to the First Appellant's long-term personal care and the private provision of care in Syria and the decision was set aside in full with fresh findings of fact to be made. As Mr Lamer accepted, the Second Appellant's appeal is wholly dependent upon the outcome of the First Appellant's appeal and there were no submissions made in respect of the conditions in Syria generally.

### **Documentary and Oral Evidence**

4. We were provided with a composite hearing bundle which was filed and served well in advance of this hearing. A bundle of additional evidence was provided in accordance with the directions which, together with the sponsor's original statements, comprised the primary material for the appeal.
5. We heard oral evidence from the sponsor via an Arabic (Syrian dialect) interpreter. There were no additional witnesses. He confirmed that his three witness statements were true. In summary, he confirmed his employment, salary (he now earns more as he works full-time), accommodation, and the deterioration of the First Appellant's mental and physical health and stated that her neighbour Hend Matawie "(Hend)" will not be able to continue to look after the First Appellant as she needs to join her husband in Turkey as soon as the appeal is determined. He also described the Second Appellant's present situation and gave a summary of the family in the UK. In oral evidence, in chief he produced without objection three photos of the First Appellant which it was said showed her at present and her accommodation. In cross-examination, he stated that there are few doctors in the region and the treatment there is poor and that the First Appellant has no other help other than from Hend and does not deal with strangers.
6. The First Appellant also relied upon two translated medical reports which in summary stated that she had been under Dr Alfrouh's care since 2005 since which time she had been suffering from anxiety and depression ever since the sponsor left as well as back pain. The First Appellant was on medication and her conditions had deteriorated. She cannot interact with strangers owing to her mental health conditions and she treats her neighbour as family. Dr Altaweel confirmed that the First Appellant had been in his care since 2018. The evidence about her mental state was largely repeated and he continued that the current circumstances and unavailability of certain medications made her condition deteriorate. There was also documentary evidence of the sponsor's tenancy agreement, payslip, bank statement and a letter from Hend. There was no challenge to any of the evidence.

### **Submissions**

7. We then heard submissions from the parties which may be summarised in the following way.
8. For the Respondent, Mr Toufan submitted that the medical evidence was sparse, that there was no independent evidence about the paucity of medical

care, including private health care in Syria and that the balancing exercise outside the Rules weighed heavily in favour of dismissing the appeal.

9. For the Appellant, Mr Lamer accepted that the First Appellant could not meet the conditions under Appendix FM on maintenance and that therefore the appeal on Article 8 ECHR should be determined outside the Rules but submitted that the conditions in sub-paragraphs E-ECDR.2.4 and E-ECDR.2.5 were satisfied, which was relevant to whether, in carrying out the balancing exercise, it would result in unjustifiably harsh consequences for the First Appellant to dismiss the appeal.
10. We reserved our decision at the end of the hearing.

### **Findings of Fact**

11. Having reflected carefully on the oral and documentary evidence adduced before us, we find that there was no challenge to the sponsor's or any other evidence and accept the First Appellant's evidence in full.
12. There is however very little documentary evidence of the availability and extent of medical and social care for the First Appellant in Syria, including whether private care can be provided. We note that this was an important finding in her favour on material errors of law at paragraph 19 of the UT decision and we have no further evidence on this issue.

### **Conclusions**

13. We find that the First Appellant's appeal engages her right to private and more particularly family life under Article 8 (1) of the ECHR. It is necessary as this is an appeal outside the Rules to carry out the balancing exercise in accordance with *Razgar [UKHL] 27* taking into account the Respondent's legitimate interest in immigration control and recognising that to succeed, the First Appellant would need to demonstrate that refusing her entry would result in unjustifiably harsh consequences for her and/or the sponsor.
14. We find that there is insufficient evidence before us to conclude that it would be impossible for someone else to take over the care of the First Appellant, even accepting as we do, that it cannot be the Second Appellant, and that although there may be some resistance from her to a stranger, ultimately the evidence does not establish that she would not accept help from another source if needed, bearing in mind that the sponsor has the funds readily available to pay for such care. We have no psychiatric evidence before us-Dr Alfrouh is a specialist in bone and joint surgery, and Dr Altaweel is a specialist in internal and neurological diseases-and we do not find that the First Appellant's mental health is sufficiently poor so that she could not accept help from another source if necessary. We do not need to find that the First Appellant has satisfied the criteria under E-ECDR.2.4 and E-ECDR.2.5 but note that there is no independent evidence about access to private care in Syria and on what we have been provided with, we were not satisfied that the First Appellant requires not only long-term personal care, but also that she could not receive the required level of care in Syria.
15. In all the circumstances, taking into account the Respondent's legitimate interest in immigration control and that we did not find that the First Appellant

could demonstrate that it would result in unjustifiable harsh consequences if she were to remain in Syria on the evidence provided, we find that the First Appellant has failed to establish under Article 8 (2) of the ECHR that her private and/or family life in the UK outweighs the Respondent's legitimate interests.

16. We therefore dismiss the First Appellant's appeal. Since the Second Appellant's appeal depends wholly upon the outcome of the First Appellant's appeal, the Second Appellant's appeal is also dismissed in limine.

### **Notice of Decision**

The appeal is dismissed.

**Anthony Metzger KC**

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

11 June 2024



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case Nos: UI-2023-005479  
UI-2023-005480  
First-tier Tribunal Nos: HU/52749/2023  
HU/52751/2023

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**

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**Before**

**UPPER TRIBUNAL JUDGE SHERIDAN**

**Between**

**Mervat Al Hawamdeh (First Appellant)**  
**Abdulsalam Alnassr (Second Appellant)**  
**(NO ANONYMITY ORDER MADE)**

Appellants

**and**

**The Secretary of State for the Home Department**

Respondent

**Representation:**

For the Appellants: Mr D Bazini, Counsel instructed by Kidd Rapinet LLP  
For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

**Heard at Field House on 29 January 2024**

**DECISION AND REASONS**

1. This decision is given orally following a hearing on 29 January 2024.

**Background**

2. The appellants are citizens of Syria. They are appealing against a decision of Judge of the First-tier Tribunal Sweet promulgated on 16 November 2023.
3. The first appellant is the second appellant's mother. The first appellant's son ("the sponsor") lives in the UK.

4. The appellants applied for entry clearance under Appendix FM of the Immigration Rules to join the sponsor in the UK. The application was considered by the respondent under the adult dependent relative route. The respondent rejected the application for several reasons, including that it was not accepted that the conditions in paragraphs E-ECDR.2.4 and E-ECDR.2.5 were satisfied.
5. At the relevant time, paragraphs E-ECDR.2.4 and E-ECDR.2.5 provided:

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

### **Decision of the First-tier Tribunal**

6. Before the First-tier Tribunal, in order to establish that she satisfies the conditions in paragraphs E-ECDR.2.4 and E-ECDR.2.5, the first appellant relied on a letter from her treating doctor in Syria, Dr Amen, as well as witness evidence, including from the sponsor who gave oral evidence.
7. The judge's assessment of the evidence is relatively brief. It is set out in paragraphs 12 - 15 of the decision. Given the issues raised in the Grounds of Appeal, I consider it necessary to set out in full these paragraphs.

"12. The first appellant relies on an undated medical report from Dr Amen, who confirms that the first appellant suffers from a slipped spine, and a surgical operation was performed, which the sponsor stated in oral evidence was about two years ago and was paid for by Mohammed Basher Alawwad (a friend of his late father). She suffers from continuous back pain with sciatica, causing lameness with cramps while walking mostly on the right side. She needs to be looked after by a person to do her daily basic personal work and needs, washing and cooking for herself, in addition to having to use crutches or a frame or support of a person to stand and walk. She also suffers from chronic mental disorders, caused by being alone after the death of her spouse, and the departure of her son. She is in constant need for someone from her family to stay with her and take care of her, and she does not accept dealing with a stranger. She needs permanent medical care. The doctor then listed the medication which the first appellant was receiving.

13. In oral evidence the sponsor was vague about the care which the first appellant actually requires, nor could give any detail of the way in her health had 'deteriorated'. He confirmed that his mother suffers from severe depression, he speaks to her 2-3 times each week depending on her mental health, and she was concerned about his and the second appellant's well-being. The only relative of the first appellant in Syria is her brother who lives 8 hours away from her; he cannot assist her as he has his own troubles. The

head of the village cannot help her. He stated that his mother cannot obtain the medication listed in the medical letter.

14. The second appellant has been asked to join the army. The help (with cooking, bathing and toileting) which the first appellant currently obtains from her neighbour, Hend Mtawie, will come to an end when she leaves Syria by the end of this year. There was no further evidence as to where Hend Mtawie will go or why she has to leave Syria. **The medical and oral evidence did not support the medical and daily care which the first appellant allegedly requires. There is no reason why the support which she currently obtains cannot continue, and she receives financial support from Mohammad Basher Alawwad, who is a friend of her late husband.** The sponsor, employed as an electrician and earning £36k p.a., also provides financial support. I was not persuaded that Ryad, a paternal second cousin of the first appellant, who is in very limited contact with the first appellant after leaving Syria 13 years ago, knows anything about her health conditions and needs, nor that he would be able to afford a monthly contribution of £250-£300 from a gross salary of £22,205 if she came to the UK.
15. There is evidence that the first appellant's two brothers, Alaa and Jamal, together with her uncle Mehedin, who are all in the UK will be able to provide financial support."

[Emphasis added]

8. The judge concluded in paragraph 17 of the decision that there was no reason the first appellant's continuing care cannot remain as now.

### **Grounds of Appeal**

9. There are two grounds of appeal. Ground 1 concerns paragraph 14 of the decision, where the judge states:

"The medical and oral evidence did not support the medical and daily care which the first appellant allegedly requires."

10. It is submitted that because the totality of the first appellant's account as to her medical and daily care requirements is contained within the medical and oral evidence, as a matter of logic it cannot be correct to say that this evidence was inconsistent with her claim. It is also submitted that if the judge's position was that the medical evidence was inconsistent with the oral evidence than a finding to this effect needed to be made but there is no such finding in the decision.

11. Ground 2 concerns another part of paragraph 14, which is where the judge states:

"There is no reason why the support which she currently obtains cannot continue, and she receives financial support from Mohammad Basher Alawwad, who is a friend of her late husband."

12. It is submitted that because the first appellants' evidence was that her neighbour would cease caring for her at the end of the year the judge fell into error by finding there was "no reason" the current support could not continue. It is argued that the judge needed to make finding, one way or the other, as to whether or not the first appellant's evidence about her neighbour was accepted.

## **Submissions**

13. Ms Everett accepted that the judge erred as claimed in the grounds but questioned the materiality of the errors on the basis that, irrespective of the challenged findings regarding the first appellant's medical and care needs, and the presence of ongoing support from a neighbour, the conditions in paragraph E-ECDR.2.5 were not satisfied. This is because under paragraph E-ECDR.2.5(b) care must be unaffordable and, with the ongoing financial support of relatives in the UK, the first appellant could afford to pay for care in Syria in the event that her neighbour ceases to provide care.

## **Error of law and materiality**

14. I agree with Mr Bazini and Ms Everett that the judge fell into error, as set out in the grounds of appeal.
15. The first error concerns the evaluation of whether the medical and oral evidence supports the first appellant's claim that she requires long-term personal care to perform everyday tasks. The first appellant submitted a medical letter indicating that she suffers from continuous back pain requiring crutches or a frame to walk, chronic mental disorders, and severe depression; and needs to be looked after by someone who undertakes daily personal tasks for her.
16. The judge did not make a finding that this evidence was unreliable. The judge also did not make a finding that this evidence, taken at its highest, was insufficient to establish that the condition of E-ECDR.2.4 was satisfied. Instead, the judge stated that this evidence, considered along with the oral evidence, did not support the medical and daily care which the first appellant allegedly requires. This finding is difficult to follow and leaves the reader of the decision unclear as to why the judge did not accept that the condition in the E-ECDR.2.4 was satisfied. As mentioned previously, Ms Everett did not dispute this ground but rather questioned its materiality.
17. The second error, raised in ground 2, concerns the finding by the judge that there was no reason why the support which the appellant currently obtains cannot continue. The difficulty with this finding, as argued by Mr Bazini and accepted by Ms Everett, is that there was evidence before the judge (in the form of the first appellant's witness evidence) that the current circumstances will not continue because the current provider of care (the first appellant's neighbour) intends to leave Syria. I agree with Mr Bazini that the failure to make a finding one way or the other on whether it was accepted that the neighbour would cease to provide support was legally erroneous and undermines the assessment of whether the conditions of paragraph E-ECDR.2.5 are satisfied.
18. I now turn to the materiality argument that was advanced by Ms Everett. Her argument, in summary, is that, because the judge found that the first appellant receives financial support from relatives in the UK, privately funded care in Syria would be affordable to her, and therefore, irrespective of the errors identified in the grounds, paragraph E-ECDR.2.5(b) is not satisfied.
19. The difficulty with Ms Everett's materiality argument, as she acknowledged at the hearing, is that the judge did not make a finding that the care required by the first appellant is available privately in Syria. The relevant question under



paragraph E-ECDR.2.5(b), when considering private provision of care, is whether such care would be unavailable or unaffordable. The judge addressed affordability, but not availability: there is no finding that privately funded care that would meet the first appellant's needs is available. In the light of this, I do not accept that the errors are immaterial.

### **Disposal**

20. Mr Bazini's view is that the matter should be remitted to the First-tier Tribunal to be made afresh. Ms Everett is neutral on disposal. Having regard to the principles considered in *Begum (remaking or remittal) Bangladesh* [2023] UKUT 00046 and *AEB v SSHD* [2022] EWCA Civ 1512, I have decided that the matter should remain in the Upper Tribunal. Although there are no aspects of the decision that can be saved and findings of fact will need to be made afresh, this is not a case where either party has been deprived of a fair hearing or other opportunity for their case to be put. Moreover, the nature and extent of fact-finding is unlikely to be extensive. The appeal will remain in the Upper Tribunal to be remade.

### **Notice of Decision**

21. The decision of the First-tier Tribunal involved the making of a material error of law and is set aside with no findings preserved. The appeal will be remade in the Upper Tribunal at a resumed hearing.

### **Directions**

22. The parties have permission to rely on evidence that was not before the First-tier Tribunal. Any such evidence must be filed with the Upper Tribunal and served on the other party at least fourteen days before the resumed hearing.

**D. Sheridan**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**6 February 2024**