



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-000369
HU/59710/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 14th of May 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE SILLS

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MRS HSIU CHIUNG KOH NEE FAN
(Anonymity Direction Not Made)

Respondent

Representation:

For the Appellant: Ms Newton

For the Respondent: The Appellant's daughter, and Sponsor, Dr Koh in person

Heard at Manchester Civil Justice Centre on 29 April 2024

DECISION AND REASONS – ERROR OF LAW

1. The Appellant appeals, with permission, against the decision (the Decision) of the First-Tier Tribunal Judge (the FTT Judge) dated 20 November 2023 allowing the Respondent's appeal.

Factual Background

2. The Respondent is a national of Malaysia, born on 10 August 1942. Her husband passed away in April 2022 and she lives alone. The Respondent's son lives in Singapore but her application to join him there was unsuccessful. The Respondent has a number of health problems summarised at para 9 of the Decision. She applied for entry clearance as the adult dependent relative of her daughter, Dr Koh, in June 2023. That application was refused on 31 July 2023 and the Respondent appealed.

3. The FTT Judge allowed the appeal having determined the appeal without a hearing. The brief reasoning is set out at para 14-23. The FTT Judge found the Appellant and Sponsor to be credible. The FTT Judge accepted that the Appellant required long term personal care to perform every-day tasks. The current care received was inadequate, and the Appellant's condition was deteriorating even with the care available. There would be adequate maintenance for the Appellant. The Appellant satisfied the requirements for entry clearance as an adult dependent relative. The Appellant could not continue to reside in Malaysia and lead an independent adult life due to her health problems. There were compassionate factors in the case which warranted a grant of entry clearance.
4. The Appellant applied for permission to appeal. The grounds argued that first, there was procedural unfairness as the Appellant uploaded additional evidence after the Review and this was not drawn to the Appellant's attention. Second, the Sponsor had not uploaded the required evidence of her annual income of £350,000. Third, the FTT Judge's reasoning was inadequate. The Sponsor had acted inappropriately in providing her medical opinion about the Appellant. The Appellant had failed to provide evidence that she had been unsuccessful in her application to join her son in Singapore. The FTT Judge had failed to explain why the Appellant's needs could not be met in Malaysia given the Sponsor's income. Permission to appeal was granted by Judge Boyes on 30 January 2024. There was no Rule 24 response.

The Hearing

5. I heard submissions from Ms Newton and Dr Koh. Ms Newton confirmed, sensibly, that ground 2 was not pursued. I reserved my decision.

Findings

6. I am satisfied that ground 3 identifies a material error of law. The relevant Immigration Rule in relevant part as set out in the decision letter states 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.

7. While the Rule has now moved to Appendix Adult Dependent Relative, the material provision, E-ECDR 2.5, remains the same and is replicated currently at ADR 5.2. The FTT Judge addresses E-ECDR 2.4, finding that the Respondent required long term personal care to perform every-day tasks. However, the Judge fails to address E-ECDR 2.5. While the FTT Judge considers that the current care received is inadequate, the FTT Judge fails to consider whether the Respondent

would be able to obtain the level of care required in Malaysia. The failure to consider this provision is a clear error of law. It renders the finding that the Respondent met the entry clearance requirements as an adult dependent relative flawed.

8. So far as there is a consideration of the Respondent's appeal on ECHR Article 8 human rights grounds outside the Rules (see para 23), that consideration is flawed for the same reason. The failure to consider whether the Respondent can obtain the required level of care in Malaysia also renders any proportionality assessment flawed on the basis of a failure to take a material matter into account.
9. In view of my finding that the ground 3 identified a material of law, it is not necessary for me to determine ground 1. I set aside the decision of the FTT Judge with no findings preserved.
10. I have considered whether the appeal should be retained in the UT or remitted to the FTT. The Appellant sought a remittal to the FTT. I have had regard to para 7 of the 2014 Practice Statement for the Immigration and Asylum Chamber of the Upper Tribunal. Noting that the Decision has been set aside with no findings preserved, that there has been no previous hearing before the FTT, and the Appellant now wishes to have a hearing, it is in the interests of justice for this appeal to be remitted to the FTT to be heard afresh with no findings preserved.

Decision

The decision of the FTT Judge allowing the appeal is set aside.
The appeal is remitted to the FTT for an oral hearing with no findings preserved.

Directions:

- a. The Appellant is to file with FTT IAC Manchester and serve upon the Respondent any additional evidence by 22 May 2024.
- b. The Respondent is to file with FTT IAC Manchester and serve upon the Appellant any additional evidence, including any witness statements, by 5 June 2024.
- c. The appeal can be listed for the first available date at FTT IAC Manchester from 19 June 2024 with a time estimate of 2 hours.

Judge Sills

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

7 May 2024