



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No.: UI-2024-000931

First-tier Tribunal No: HU/57399/2022
IA/10474/2022

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On 12 August 2024**

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

**REHANA SIDDIQI
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant:

Ms Camila Zapata Besso, Counsel instructed by Payne Hicks
Beach Solicitors

For the Respondent:

Ms S Cunha, Senior Home Office Presenting Officer

Heard at Field House on 23 July 2024

DECISION AND REASONS

1. The appellant appeals to the Upper Tribunal from the decision of First-tier Tribunal Judge Richardson promulgated on 18 December 2023 (“the Decision”). By the Decision, Judge Richardson dismissed the appellant’s appeal against the decision of an Entry Clearance Officer to refuse to grant her entry clearance as an adult dependant relative (ADR).

Relevant Background

2. The appellant is a national of Bangladesh, whose date of birth is 17 November 1952. On 31 March 2022 she applied for entry clearance as an ADR. In a covering letter dated 7 April 2022, the appellant’s previous representatives said that the appellant had been heavily reliant upon her husband who had recently passed away. In her husband’s absence, she

was now wholly dependent and reliant upon her daughter, who was the sponsor of her application. Not only did she require emotional support from the sponsor, but also after-care following medical treatment, and support for daily activities including cooking, intimate care, and personal hygiene. The official documents provided with the application showed that the appellant suffered from physical fatigue, and that control of her diabetes and cholesterol had deteriorated since her husband passed away. Her private endocrinologist (Dr Ibrahim) had confirmed in writing that her condition could only be managed with careful attention to diet and lifestyle. This could only be performed by the sponsor in the UK. While the appellant had a domestic helper to assist with cooking and cleaning, he was a male and illiterate, and he was thus unable to provide the necessary day-to-day care that the appellant required.

3. It was imperative that the appellant was cared for by a female who she felt connected to and was comfortable around, due to her mental and medical health issues. Day-to-day care activities, such as personal hygiene and intimate care, cleaning, monitoring of food and financial management, could not be performed by the appellant herself, and there was no one available in Bangladesh to perform these tasks.
4. In the refusal decision of 22 September 2022, it was explained that the appellant's application for entry clearance as an ADR was being refused because she did not meet all the eligibility requirements of section E-ECDR of Appendix FM. In support of her application, she had provided a medical letter detailing that she was suffering from Type 2 diabetes, high blood pressure, cholesterol and cataracts in both eyes. It did not confirm, however, that she required long-term personal care to perform everyday tasks. Therefore, she did not meet the requirements of E-ECDR.2.4.
5. The medical letters that had been provided confirmed that she was receiving the required level of healthcare and medication in Bangladesh, and there was nothing to suggest that this was going to change and that, moving forward, she would no longer be able to obtain the required level of care. Therefore, she did not meet the requirements of E-ECDR.2.5.
6. The appeal bundle contained *inter alia* the following correspondence cited in the renewed grounds of appeal: (a) a letter from the bank manager of the appellant's late husband dated 1 February 2022 stating that the appellant, having never managed finances before, found it difficult to perform day-to-day administrative activities regarding banking and investments, and often requested the bank to speak directly to the sponsor, and that it would be ideal if she could live with the sponsor for her financial affairs to be conducted effectively; (b) a letter dated 22 February 2022 from Dr Sagufa Anwar, a cousin of the sponsor, now living in Canada, who said that she had previously supported the appellant and her late husband, who had undergone cancer treatment under her management, and that the appellant remained in need of support emotionally and administratively in the day-to-day; and that she required the support and proximity of her immediate family for both emotional and practical reasons, and (c) a letter dated 31 January 2022 from the family oncologist,

Dr Ashim Kumar Sengupta, who stated that the appellant had relied on her husband for most things and was unable to take care of him, given her own physical and mental health needs, and that in his own opinion, having known the appellant for several years, he did not believe it was possible for her to take care of herself, practically and emotionally, in Bangladesh.

7. In the appeal skeleton argument (ASA) that was settled by the appellant's previous representatives, it was not in terms submitted that the respondent had been wrong to treat the appellant as not meeting the requirements of the Rules. The primary case put forward was that there were exceptional circumstances in the appellant's case which rendered the refusal a breach of Article 8 because it would result in unjustifiably harsh consequences for her, the sponsor and the sponsor's husband and children.
8. In the respondent's review dated 27 June 2023, the Pre-Appeal Review Unit (PARU) noted that the sponsor had provided a witness statement in support of the appeal in which she said that it was during her mother's last visit to the UK that it was decided that an application as an ADR should be made for her. She said it was clear that she needed help on a day-to-day basis, and not just for physical tasks, but emotionally as well, as she had been devastated by the death of her husband.
9. However, without a satisfactory medical diagnosis as to what everyday tasks the appellant was not able to perform, it had not been demonstrated that the appellant required long-term personal care to perform everyday tasks.

The Hearing Before, and the Decision of, the First-Tier Tribunal

10. The appellant's appeal came before Judge Richardson sitting at Taylor House on 10 November 2023. The appellant was represented by Counsel, but there was no representation on behalf of the respondent.
11. At para [8] of the Decision, the Judge summarised the appellant's case on appeal. The appellant had lost her husband and as a result she now had no family or other adequate support in Bangladesh. Furthermore, the appellant had health needs which she was unable to manage herself. There were no alternative care arrangements in Bangladesh, such as care homes, and the sponsor's family and private life could not continue without the appellant being in the UK.
12. At para [9], the Judge accepted that the appellant's husband had passed away on 18 July 2021 having suffered from cancer for a number of years. The appellant lived in the accommodation in Bangladesh which she owned, and she employed a domestic worker who had worked for her and her late-husband for a number of years.
13. At para [10] the Judge noted that in her witness statement the sponsor said that her mother had developed OCD since the death of her husband. The appellant visited the sponsor in the UK in December 2021 and stayed until the end of March 2022, and during that time received cataract

surgery which was paid for privately. The appellant also saw a GP and a diabetic specialist, and these were also paid for privately.

14. At para [11] the Judge noted that in her oral evidence the sponsor explained how she was able to look after her mother while she was a guest in her home, providing suitable meals for her which assisted her in managing her diabetic condition. The sponsor also said that she was able to provide emotional support to her mother after her cataract surgery; that she was able to nurse her mother and give her eye drops regularly; that she would take her mother for walks outside and assist her with personal hygiene tasks, such as cutting her toe nails.
15. At para [12] the Judge accepted that the appellant was distraught at the death of her husband, and that the sponsor was able to provide her with practical and emotional support during that time. However, the test set by the Immigration Rules related to everyday tasks. The sponsor confirmed that the appellant was able to wash and dress herself. The appellant had domestic help from a long-standing employee who prepared meals for her. She appeared to be financially independent so there was no issue as to whether she was able to remain in her current accommodation. She underwent cataract surgery in the UK on one eye, which appeared to be successful, and there was no apparent reason for why she could not undergo surgery on the other eye if she considered that still necessary in either Bangladesh or some other country.
16. At para [13] the Judge addressed the assertion that the appellant had difficulty controlling her diabetes due to her diet, and that the food available to her in Bangladesh which was prepared by her cook did not assist in that control. The Judge said that it seemed a relatively straightforward exercise to ask the cook to vary the ingredients or portion sizes so as to help with the control of her diabetes. Although she said he was illiterate, this could be explained to him either by the appellant or perhaps the sponsor using modern means of communication. He appreciated that the appellant enjoyed spending time with her daughter and grandchildren in the UK, but there was nothing to stop her from communicating with them via Video Conferencing or some other means.
17. At para [14] the Judge said that in light of his findings above, the appellant had not met the evidential test to show that she met the requirements of E-ECDR.2.4.
18. At para [15] the Judge said that if he was wrong about the above point, he would not accept that there were no residential care homes for the elderly in Bangladesh. The appellant and the sponsor were both relatively wealthy and could look to fund such care, if that was their choice. He did not accept that the sponsor had shown that she had carried out an exhaustive search of a sufficient standard to satisfactorily demonstrate that there was no care facility available to her mother.
19. The Judge went on to address an Article 8 claim outside the Rules. The Judge found that the sponsor had provided emotional and practical support

to the appellant, particularly since the death of her husband. But in his view, this did not go further than what one could reasonably expect an adult child to provide to a parent who has recently lost a spouse. If he was required to make a finding on the point, he would find that family life did not exist for the purposes of Article 8(1) ECHR, as their relationship did not extend beyond those of normal emotional ties.

The Reasons for the Initial Refusal of Permission to Appeal

20. The original grounds of appeal are not before me, but it appears from the decision of Judge Grimes dated 9 February 2024 that Ground 1 was that the Judge erred in failing to take account of relevant evidence when considering whether the appellant met the dependency requirements of the Rules, and that the Judge had thereby made material errors of fact; and that Ground 2 was that the Judge had erred in failing to take account of relevant factors when making an Article 8 assessment outside the Rules.
21. Judge Grimes refused permission to appeal, as he was of the opinion that the grounds amounted to no more than an expression of disagreement with the Judge's findings and that they did not identify an arguable error of law in the decision of the First-tier Tribunal.

The Reasons for the Eventual Grant of Permission to Appeal

22. Ms Zapata Besso, who did not appear below and who was instructed by a different firm of solicitors from those who had settled the ASA for the hearing in the First-tier Tribunal, settled a renewed application for permission to appeal on 7 March 2024, and on 29 May 2024 Upper Tribunal Judge Kamara granted permission to appeal for the following reasons:

"It is arguable, for the detailed reasons set out in the renewed grounds, that the Judge failed to consider all relevant evidence in concluding that the appellant did not require long term personal care to perform everyday tasks. It is further arguable that the need for the sponsor to personally provide care was not taken into account."

The Error of Law Hearing in the Upper Tribunal

23. At the hearing before me to determine whether an error of law was made out, Ms Zapata Besso developed the renewed grounds of appeal and also directed my attention to the reply which she has settled in response to the respondent's Rule 24 response opposing the appeal dated 11 June 2024. On behalf of the respondent, Ms Cunha developed the Rule 24 response opposing the appeal and submitted that no material error of law was made out. After briefly hearing from Ms Zapata Besso in reply, I reserved my decision.

Discussion and Conclusions

24. In view of the grounds of appeal in their totality, I consider that it is helpful to bear in mind the observations of Lord Brown in *South Bucks County Council -v- Porter* [2004] UKHL 33; 2004 1 WLR 1953. The

guidance is cited with approval by the Presidential Panel in *TC (PS compliance - "Issues-based reasoning") Zimbabwe* [2023] UKUT 00164 (IAC). Lord Brown's observations were as follows:

"36. The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the "principal controversial issues", disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in dispute, not to every material consideration...Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision."

25. I also take account of the guidance given by the Court of Appeal in *Britcits* [2017] EWCA Civ 368 and how that guidance is reflected in paras 34 and 35 of Appendix FM-SE.

26. In *Britcits* the court said at para [59] that, as was apparent from the rules and the guidance, the focus is on whether the care required by the ADR applicant can be reasonably provided to the required level in their home country. 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. These considerations included 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* (my emphasis). What is reasonable is, of course, to be objectively assessed."

27. Para 34 of Appendix FM-SE provides that evidence that as a result of age, illness or disability the applicant requires long-term personal care should take the form of:

- (a) Independent medical evidence that the appellant's physical or mental condition means that they cannot perform everyday tasks; and
- (b) this must be from a doctor or other health professional.

28. Para 35 of Appendix FM-SE provides that independent evidence that the applicant is unable, even with the practical and financial help of the sponsor in the UK, to obtain the required level of care in the country where they are living should be from:

- (a) a central or local health authority;

- (b) a local authority; or
- (c) a doctor or other health professional.

Ground 1

29. Ground 1 is that the Judge failed to take account of or mention relevant undisputed factors when considering whether the appellant met the requirements of paragraph E-ECDR.2.4.
30. The two main criticisms advanced under Ground 1 are, firstly, that it was implicit from the sponsor's witness statement evidence that the appellant requires long-term personal care to perform some everyday tasks; and, secondly, that the Judge failed to refer to external evidence which supported the sponsor's evidence on this point, including the evidence of the appellant's bank manager, and of Dr Anwar and Dr Sengupta.
31. However, as was correctly stated in the Respondent's Review, none of this evidence discharged the essential function of identifying which - if any - everyday tasks the appellant was unable to perform due to a diagnosed medical condition, such as, for example, the diagnosis of Type 2 diabetes.
32. I do not consider that the Judge erred in law in not referring to the external evidence in order to highlight its crucial deficiency, not only because this had been pointed out in the Respondent's Review, but also because it was not submitted in the ASA that the medical evidence in the appeal bundle showed that the appellant required long-term personal care in order to perform everyday tasks x, y and z due to age, illness or disability, and it does not appear that Counsel for the appellant at the hearing in the First-tier Tribunal put forward a case that was materially different from that put forward in the ASA. In short, although there was no formal abandonment of the case that the E-ECDR.2.4 was satisfied, it was not a principal controversial issue in the appeal that it was satisfied, contrary to what was said in the refusal decision and the Respondent's Review.
33. As to Ms Zapata Besso's first line of attack, I consider that this overlooks the fact that there is a crucial distinction between the provision of assistance and the appellant's ability to perform everyday tasks without such assistance, and a crucial distinction between what the sponsor (or others) believed would be best for her mother in an ideal world, and the requirement of the Rules that, if and insofar as long-term personal care to perform everyday tasks is needed, the care that is available in the home country must reach the threshold of reasonableness, not a higher threshold. It is tolerably clear from the Judge's line of reasoning that he had these distinctions in mind.
34. The distinctions are manifest in the sponsor's evidence about her mother's personal hygiene. While she had assisted her mother in the performance of everyday tasks during her last visit to the UK, including cutting her toe nails, the sponsor's oral evidence was that her mother was able to wash and dress herself in Bangladesh.

35. Although cooking is an everyday task, there was no specific evidence that the appellant could not cook for herself if necessary. But in any event, this was purely a hypothetical question, as the appellant continued to be cooked for by her domestic worker. The issue raised in the appeal was whether her food intake could be adequately managed in Bangladesh so as to control her diabetes and cholesterol, in accordance with the recommendations of Dr Ibrahim whom the appellant had consulted in the UK, or whether she required her daughter to prepare all her meals. The Judge gave adequate reasons for finding that the appellant's diabetes and cholesterol could be adequately controlled in Bangladesh by the appellant and/or the sponsor giving verbal instructions to the domestic worker as to the types of food that should be cooked and the portion size.
36. As to other everyday tasks, such as taking prescribed medication or cutting her toe nails, there was no specific evidence from the sponsor or indeed from any other source to the effect that the appellant was currently incapable of performing these tasks on her own. As the domestic worker was male and illiterate, the appellant must have been coping on her own with her personal hygiene and taking her prescribed medication in the right quantities at the right time, and there was no independent medical evidence pointing to any cognitive impairment on her part which called into question her ability to manage in this regard. Although the sponsor said that her mother had suffered from OCD since the death of her father, there was no formal medical diagnosis to this effect.
37. Similarly, there was no independent medical evidence that the appellant could not manage at a rudimentary level the conduct of her financial affairs without the sponsor being physically present, just as there was no independent medical evidence to the effect that she was not able to wash or dress herself.

Ground 2

38. Ground 2 is that the Judge failed to take account of all mentioned relevant undisputed factors when considering whether the appellant met paragraph E-ECDR.2.5. It is submitted that - in reaching the conclusion at paragraph [15] that the required level of care would be available externally to the appellant by way of residential/at-home care in Bangladesh - the Judge failed entirely to take account of unchallenged evidence relating to the appellant's needs and her emotional well-being, which showed that the appellant required the sponsor to care for her in person, so that even if a residential care home was available in Bangladesh, that was insufficient to meet the required level of care.
39. I consider that Ground 2 is based on the same fallacious reasoning which underpins Ground 1. Firstly, Ground 2 wrongly conflates what the sponsor is able to do for her mother with her mother's actual needs. Secondly, the sponsor's assessment of her mother's needs is treated as having the same evidential status as an assessment by an independent medical expert, which is typified by the argument advanced in paragraph [30] of the Grounds.

40. It is said that the sponsor's evidence is that the appellant needs "presential" personal care from her to meet her emotional and other needs. These go beyond the physical or mundane tasks that a paid carer at home or in a residential care setting can fulfil. The sponsor - the person who knows the appellant best - is of the view that her physical and emotional needs cannot be taken care of in Bangladesh, and that she will continue to suffer a decline in her physical and mental health if she remains there, away from her close family.
41. As the sponsor's assessment is not supported by independent medical evidence, the Judge was not required to treat her assessment as being dispositive of whether the requirements of E-ECDR.2.5 were made out.
42. The Judge rightly directed himself at the outset of his analysis as to the applicable eligibility criteria, and it was not incumbent on the Judge to go through every piece of evidence relied on by way of appeal, either emanating from the sponsor or from a third party, in order to explain why that piece of evidence fell short of the required evidential threshold.
43. Reliance is also placed on the fact that the Judge made no explicit reference to the Country Expert report from Dr Hoque, who stated in his report that cultural societal expectations in Bangladesh are that family members will care for their elderly relatives; that it is unusual for elderly individuals to live alone with a non-relative carer or in a nursing home; and that the absence of family assistance was likely to lead to social stigma and marginalisation, which was likely to affect the appellant's overall health and well-being.
44. It is not disputed in the grounds that it was open to the Judge to find that residential care would be available for the appellant in Bangladesh.
45. Ms Zapata Besso's criticism is that, having regard to Dr Hoque's report and the evidence of the sponsor, the Judge should have gone on to ask himself: *"Even if such residential care was available to the appellant, would it meet the appellant's significant needs?"*
46. While the question of whether the required level of care for the applicant in their home country is capable of embracing emotional and psychological requirements, such requirements must be verified by independent medical evidence, and the Country Expert report of Dr Hoque does not fall into this category.

Ground 3

47. Ground 3 is that the Judge erred in law in failing to take account of relevant factors when conducting the Article 8 assessment outside the Rules.
48. On analysis, Ground 3 is no more than an expression of disagreement with a finding on the absence of family life which was open to the Judge for the reasons which he gave.

Notice of Decision

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

Andrew Monson
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

1 August 2024