Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/11392/2013

THE IMMIGRATION ACTS

Heard at Field House	**Promulgated on**
On 2 June 2014	**On 3 June 2014**

Before

UPPER TRIBUNAL JUDGE PITT

Between

BIBI HAJI SHAMAILA AHMADI

Appellant

And

ENTRY CLEARANCE OFFICER - ISLAMABAD

Respondent

Representation:

For the Appellant: Ms Akther, instructed by Malik & Malik Solicitors
For the Respondent: Mr Kandola, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. This is an appeal against the decision promulgated on 29 January 2014 of First-tier Tribunal Judge Monro which refused the appeal against the Secretary of State's decision dated 25 April 2013 refusing entry clearance as a dependent parent.

2. The respondent refused the application as paragraph E-ECDR.2.5 of Appendix FM of the Immigration Rules was not met. This states:

> 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

3. The respondent found that this paragraph was not met as it had not been shown that "Afghan culture is so restrictive that it is not possible for you to receive car there."

4. Judge Monro did not restrict her consideration to paragraph E-ECDR.2.5 but also addressed E-ECDR.2.4 which states as follows:

> 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.

5. The grounds of appeal did not challenge Judge Monro's decision finding that paragraph 2.4 was not met even though it was not a point taken against the appellant by the respondent in the refusal letter. However, Mr Kandola did not object to Ms Akther varying her grounds in order to argue that the First-tier Tribunal erred in considering paragraph 2.4 and, in the alternative that it erred in substance in that assessment. I therefore heard submissions on this ground.

6. In my view no error arises from the consideration of whether paragraph 2.4 was met. RM (Kwok On Tong: HC395 para 320) India [2006] UKAIT 00039 is authority for R v IAT and another ex parte Kwok On Tong [1981] Imm AR 214, stating in the head note that

> "Kwok On Tong is still good law and an Immigration Judge cannot allow an appeal on the ground that the decision was not in accordance with the Immigration Rules unless satisfied that the requirements of the Immigration Rules were (or are, as appropriate) met."

7. Nothing in the determination or in Ms Akther's submissions suggested that the parties were not in a position to deal with paragraph 2.4 of the Immigration Rules before the First-tier Tribunal.

8. I also did not find that anything could turn on the First-tier Tribunal judge referring at [18] to an unreported case of the Upper Tribunal which considered the meaning of "personal care" in paragraph 2.4. Ms Akther accepted that she was unable to maintain that the case or its ratio had not been before the parties at the First-tier Tribunal hearing. It appeared to me that the discussion of what amounted to "personal care" set out at [18] was uncontentious. It cannot mean medical care as suggested by Ms Akther. If that is what was intended, then the Immigration Rules would say so. The inclusion of the words "everyday tasks" in paragraph 2.4 indicates that the personal care is in connection with getting up, dressed, washed, fed and so on, those being "every day tasks".

9. It was my view, however, that Judge Monro did err in stating at [19] she "heard no evidence that the appellant requires intimate or bodily contact from a carer." There clearly was such evidence before her. The Appendix 1 application form stated at 1.11 that "I require physical care and support". The letter dated 21 January 2013 from the legal representatives accompanying the application stated:

> "Mrs Ahmadi has been living alone and she is finding it extremely difficult to carry out basic domestic duties such as cooking, washing, bathing herself, heating water as there are no regular power or gas facilities in place."

The letter also stated that she "becomes breathless with small amount of movement" and "she requires continuous support and care which is unavailable in her home country." It also states "[p]rior to her younger daughter getting married, the Applicant had been heavily reliant on Aisha to physically care for her on a daily basis" and that "since her daughter's marriage, the Applicant has been unable to look after herself."

10. It was not my view that the failure to consider the need for personal could be material, however. This is because the finding of Judge Monro at [25] that paragraph 2.5 was not met as it had not been shown that the appellant's daughters could not provide her with personal care was sound so the appeal had to fail in any event.

11. The appellant relied on a number of submissions as to there being no-one to provide personal care for her in Afghanistan. The Appendix 1 application form stated at 1.14 that the appellants daughters:

> "…are married and live far away … and leading independent lives. Other extended family members & friends are not able or willing to provide me with care or take responsibility for me."

12. It goes on at 1.16 to state that:

> "My sponsor has tirelessly tried to arrange for someone to care for me. But it has been difficult due to cultural and religious reasons and individuals personal family commitments."

13. The legal representative's letter stated on page 2 that:

> "The Applicant's daughters both live in rural areas far away from their mother and have their own family responsibilities and are not permitted to leave their families on a regular basis to care for their mother. Similarly, it is not possible for the Applicant to live with her daughters as cultural restrictions do not permit a mother to live with her daughters after their marriage."

14. On page 3 the letter stated that:

> "The Sponsor and his brother have persistently tried to arrange for friends and distant relatives who live nearby to the Applicant to care for her in their absence; however this has been problematic as no individual has been able to visit their mother on a daily basis to give her the support she in dire need of because it has not been possible due to their own personal family commitments.
>
> It has also been difficult for the Applicant's sons to employ someone on a permanent basis to care for her due to religious and cultural reasons, as only a female is permitted to look after another female if she is not part of her family, furthermore, the female members of a family are not permitted to work in a stranger's house. Therefore, it has proved impossible to find someone to care for the Applicant."

15. It goes on at 1.16 to state that

> "My sponsor has tirelessly tried to arrange for someone to care for me. But it has been difficult due to cultural and religious reasons and individuals personal family commitments."

16. It remains the case that these were submissions or assertions made for the appellant and there was no country evidence to support the claim that for cultural reasons she could not live with her daughters even though she might be in need of assistance and that, also for cultural reasons, no one else could provide her with personal care if her relatives could not. That was why the respondent did not find paragraph 2.5 was met and why it is my conclusion that the finding of Judge Monro to the same effect was sound.

17. For these reasons I do not consider that the First-tier Tribunal made an error in law. The appellant's appeal is accordingly dismissed.

Signed:  Date: 2 June 2014

UPPER TRIBUNAL JUDGE PITT