IAC-AH-DP-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/15237/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 10 March 2015	**On 30 March 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE G A BLACK

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

MS AISHA HASSAN YOUSIF IBRAHIM
(ANONYMITY DIRECTION NOT MADE)

Claimant

Representation:
For the Appellant: Mr L Tarlow (Home Office Presenting Officer)
For the Claimant: Mr M Hoshi (Solicitor), Sabeers Stone Greene LLP

DECISION AND REASONS

1. The Claimant whose date of birth is 5 March 1950, is a citizen of Sudan. She appeals a decision made by the Secretary of State on 10 January 2014 refusing her application for leave to remain under paragraph 276ADE and under Article 8.

2. This matter comes before me for consideration as to whether there was an error of law by the First-tier Tribunal. The appellant in this matter is the Secretary of State and for the sake of convenience I refer to the parties as "the Secretary of State" and to "the Claimant".

3. The Tribunal allowed the appeal under Article 8 outside of the rules having found exceptional circumstances in that the Claimant was an elderly and sick woman who was reliant on her daughter and family, who are all British citizens settled in the UK for all her needs, and that no suitable care could be provided in Sudan. The sponsor would be forced to return to Sudan which would cause a disruption in family life in the UK.

4. The Secretary of State contended in her grounds that the First-tier Tribunal (Judge Rothwell) in a decision promulgated on 4 December 2014, erred in law by reaching conclusions that were not open to it on the evidence and making findings that were irrational (perverse).

5. Permission to appeal was granted by First-tier Tribunal Judge Kelly on 21 January 2015. The permitting judge found the grounds to be arguable given that:

    (i) "The Tribunal found that the appellant's state of health was a circumstance that fell outside the Immigration Rules [36] (in spite of the provision that it is made for it under Appendix FM of the Immigration Rules) and the fact that the sponsor had given evidence that there may be suitable care homes in the appellant's country of origin [25],

    (ii) treated the inability of the appellant to integrate into UK society as a factor that weighed in her favour [41] in apparent contradiction to the public interest question as defined by Section 117B of the Nationality, Immigration and Asylum Act 2002,

    (iii) found that the appellant had established family life whilst in the UK legally, had never breached immigration controls and had 'complied with the requirements of her visa in the past' [42] in spite of the fact that since 2009 she had spent the majority of her time in the UK, under the auspices of a multi-visit visa, without ever having sought entry clearance as an adult dependant relative, and

    (iv) treated 'the sponsor's position in the United Kingdom' (an apparent reference to the fact that she is settled in the United Kingdom) as the 'only' factor that tipped 'the balance of proportionality' in the appellant's favour."

6. At the hearing before me Mr Tarlow expanded on the grounds. He submitted that as the Claimant's circumstances were clearly covered by the Immigration Rules under the dependant relative provisions and there was no basis for the Tribunal to have gone outside of the Rules. The Tribunal had given weight to the fact that the sponsor was a GP. He submitted that she should not have been placed in a better position than others because of her profession.

7. Mr Hoshi submitted that the Tribunal decision was flawless. This was an Article 8 appeal. The Tribunal had clearly set out why it believed that the medical circumstances were exceptional and why the sponsor's considerations were taken into account in favour of the Claimant. The Tribunal accepted the medical conditions were of critical significance and that the care provided by the sponsor due to her professional qualification was unique. Further the Tribunal had taken into account that the sponsor had taken a decision not to put her mother into a care home either in the UK or in Sudan. The sponsor was now pregnant with a baby due in May and it would prove to be more difficult for her to travel to Sudan with her mother. Public interest factors had properly been considered under Section 117B including the fact that the claimant was not able to speak the English language.

Discussion and Decision

8. The Claimant is a national of Sudan and she has been visiting the UK on a regular basis from 2009. She last entered the UK on 14 September 2013 and subsequently made an application for further leave to remain on 10 January 2014. There is no dispute as to the facts in the case in particular as regards the claimant's poor state of health.

9. As regards the concerns raised as to the Claimant's immigration history, I am satisfied that she has never overstayed her visa and throughout her time in the UK has been with lawful leave. She has not been found to be in breach of her landing conditions at any point during her stay in the UK prior to submitting her Article 8 application. I find no merit in the ground raised in this regard.

10. As to the contention that the Tribunal erred by placing undue weight on the sponsor's profession as a GP and thereby given preferential treatment, I do not consider that this was a fair representation of the position taken by the Tribunal. The Tribunal took the view that because of the sponsor's job she was in a better position to be able to provide daily care for her mother including medical input and personal assistance together with her husband who is self-employed and works from home. The Tribunal found that there were no relatives able to look after the Claimant or to coordinate any care in Sudan. The Tribunal took into account the public interest in the fact that the sponsor was training as a GP in the UK and it was not in the public interest for her to have to leave the UK mid training given that as a doctor she was a useful resource.

11. The Tribunal found compelling or exceptional evidence meriting consideration of Article 8 outside of the Immigration Rules. Notwithstanding that no application had been made under the dependant relative rules from outside of the UK, I am satisfied that the Tribunal had regard to all of the evidence of the particular circumstances including the Claimant's significant health difficulties, the deterioration in health whilst in the UK and the care provided for her by her daughter. It accepted that the sponsor would return to Sudan with the Claimant in the event that she

was not granted leave, and that in turn would have a significant and disruptive effect on the family life in the UK. I am satisfied that the Tribunal properly evaluated the evidence and made findings that were open to it on the evidence before it, and gave clear and adequate reasons for its decision.

12. The Tribunal properly took into account all public interest considerations and had regard to Section 117 of the Nationality, Immigration and Asylum Act 2002 as amended.

13. I find no material error of law in the determination. The Tribunal made findings that were open to it on the evidence available in this particular case, followed the correct approach to Article 8, proportionality and had regard to the public interest factors. The grounds relied on by the Secretary of State amount to a disagreement with the Tribunal's findings.

Notice of Decision

The appeal is dismissed.

The decisions and reasons dated 4 December 2014 shall stand.

The appeal is allowed under human rights grounds Article 8 ECHR.

No anonymity direction made.

Signed Date 30.3.2015
GA Black

Deputy Upper Tribunal Judge G A Black

TO THE RESPONDENT
FEE AWARD

No fee award. The Tribunal required the benefit of the claimant's evidence in order to reach a decision.

Signed Date 30.3.2015
GA Black

Deputy Upper Tribunal Judge G A Black