



**Upper Tribunal
(Immigration and Asylum Chamber)**

**Appeal Number IA/36778/2013
IA/36780/2013**

THE IMMIGRATION ACTS

**Heard at Field House
On 20 November 2014**

**Decision & Reasons promulgated
On 19 June 2015**

Before

Deputy Judge of the Upper Tribunal I. A. Lewis

Between

**(1) Benik Aghajanianians
(2) Folora Yessaian
(Anonymity orders not made)**

Appellants

and

Secretary of State for the Home Department

Respondent

Representation

For the Appellants: Ms S Amal of MAAS.

For the Respondent: Ms J Isherwood, Home Office Presenting Officer.

DECISION AND REASONS

1. These are linked appeals against the decisions of First-tier Tribunal Judge Devittie promulgated on 27 August 2014 dismissing each of the Appellants' appeals against decisions of the Respondent dated 5 September 2013 to refuse to vary leave to remain and to remove each of them from the UK.

Background

2. The Appellants are nationals of Iran born on 26 May 1928 and 21 July 1940 respectively. They are husband and wife. They entered the UK on 18 September 2012 pursuant to visitor visas. On 4 January 2013 they applied for leave to remain. The applications were refused, and removal decisions were made by way of Notices of Immigration Decision in consequence.
3. The Appellants appealed to the IAC.
4. The First-tier Tribunal Judge dismissed the Appellants' appeal for reasons set out in his determination.
5. The Appellants sought permission to appeal which was granted by First-tier Tribunal Judge Hollingworth on 14 October 2014.

Consideration

6. In granting permission to appeal Judge Hollingworth identified two arguable errors of law: one in respect of "*an adjournment [being] refused*": the other in respect of whether the correct Rules had been applied to the appeal.
7. The lengthy Grounds in support of the application for permission to appeal include the following at paragraph 1b: "*The Tribunal materially erred in law by failing to adjourn the hearing in view of the fact that the respondent had failed to serve statements of reasons on the appellants along with the notices of its decisions... and had failed to file the statements of reasons with the tribunal...*".
8. Before me Ms Ammal acknowledged that there was no evidence that an application for an adjournment had been made, and also, necessarily, acknowledged that this put her in difficulty in pursuing this ground of challenge. She indicated that she would not pursue before the Upper Tribunal the issue of the apparent absence of a RFRL before the First-tier Tribunal. She expressly accepted that the Appellants had been able to bring forward the case that they had wanted to present, and had had an adjudication upon it by the First-tier Tribunal.
9. As regards the Immigration Rules, the first thing to note is that the Appellants' application sought "*indefinite leave to remain in the United Kingdom under paragraph 318 with reference to paragraph 317 immigration rules, and Leave Outside the Rules (LOTR)*", (see opening paragraph of representatives' letter dated 2 January 2013 enclosing the SET(O) application form and supporting documents (Respondent's bundle before the First-tier Tribunal annex D). However, because the Appellants' applications were made after 9 July 2012, and the transitional provisions in Part 8 of the Immigration Rules, in particular paragraph A280(c)(ii) and (d) did not apply, paragraphs 317 and 318 were not the applicable rules.

10. The First-tier Tribunal Judge correctly identified that the applicable rules were to be found in Appendix FM (paragraph 7). He then stated that Section EC-DR - 'Entry clearance as an adult dependent relative' was applicable, and went on to consider aspects of that Section. This was in error because the Appellants were not seeking entry clearance, but leave to remain - and indeed indefinite leave to remain.
11. Bearing in mind that they could not qualify under the rules for limited to remain as a parent because their 'child' was over 18, under the Rules the Appellants fell to be considered under Section E-ILRDR - 'Eligibility for indefinite leave to remain as an adult relative'. However, each of the Appellants failed at the first requirement - being in the UK with valid leave to remain as an adult dependent relative (E-ILRDR.1.2).
12. Further and in any event, the Judge's entirely sustainable findings in respect of the financial requirements (paragraph 9) were equally applicable to Section E-ILRDR: see and compare the identical requirements of E-ECDR.3.2 and E-ILRDR.1.4.
13. Accordingly the error in identifying EC-DR as the applicable rules was not material to the outcome under the Rules.
14. Nor, in my judgement was it material to the Judge's evaluation of Article 8. I accept that the Immigration Rules form a backdrop to a consideration of Article 8: necessarily so because an element of the Article 8 assessment is an attempt to identify whether there are any circumstances not adequately covered by the Rules. This should of course, properly, involve and identification of the correct applicable rule. However, any such failure to correctly identify the applicable rule - as here - is not inevitably fatal if there is no material difference in respect of the consideration of an inapplicable rule.
15. In my judgement, on the facts of this particular case the Judge's error in wrongly identifying the applicable rules could have made no material difference to the evaluation under Article 8 bearing in mind the findings that he made which were equally applicable to the Rules that should have been applied to the appeal - and there was in fact a further basis upon which the Appellants would have failed under the correct rule, i.e. that they entered with entry clearance as visitors and not with entry clearance as adult dependent relatives.
16. Whilst it is correct, as identified in the Grounds in support of the application for permission to appeal, that the post-entry Rules do not make any express reference to care needs, I do not accept that in the context of Article 8 the requirement under the pre-entry Rules in respect of care needs become, as pleaded, "*irrelevant*". This is because the post-entry rules make it a requirement that an applicant have entered as an adult dependent relative, and necessarily therefore to have entered having satisfied an entry clearance officer in respect of care needs. An in-country applicant cannot generally, as it were, 'by-pass' the care

requirements of the system of immigration control in respect of adult dependent relatives in circumstances where he or she entered in a different category and has made an application which expressly falls for refusal under the Rules on the basis that he or she did not enter because of pressing care needs that could not be met in his or her own country. Accordingly, in my judgement, the care needs aspect is highly relevant a consideration under Article 8.

17. Otherwise as regards the Article 8 submission, in the Grounds in support of the application for permission to appeal it is argued that the Judge's decision was irrational in the sense that "*no reasonable Tribunal could ever have come to it*" (Part II, Grounds at paragraph 1). It is not apparent that such a submission found any favour with Judge Hollingworth in granting permission to appeal. Be that as it may, in any event I reject the submission.
18. The First-tier Tribunal Judge did identify that "*This is a difficult case*" (paragraph 21). The compassionate circumstances inevitably involved in an application to remain made by elderly parents, one of whom is suffering from a number of ailments as identified in the supporting medical evidence, may make any adverse decision 'difficult'; that is very different from making the decision one of perversity.
19. In this context, and generally, it is abundantly clear that the First-tier Tribunal Judge gave careful consideration to the evidence, which is clearly set out at paragraphs 3-6 of the determination. It is equally clear that the Judge gave careful evaluation to this evidence in the remaining body of his decision. I do not accept for a moment that his conclusion was irrational or otherwise unsustainable.
20. In many respects this is a paradigm case adequately and exactly covered by the Rules, and in respect of which there is nothing exceptional. The Immigration Rules in respect of adult dependent relatives overtly set out specific, and quite demanding, requirements both in respect of the nature of care needs and the lack of adequate provision in the country of habitual residence, and the specified evidence required in support (Appendix FM-SE paragraphs 33-37). Where the Judge was not satisfied in respect of such matters, and where in reality there was nothing exceptional being advanced in the case beyond the claimed care needs that were the very particular concern of the Rules, it was entirely justifiable and sustainable to conclude that the Appellants' removal in consequence of the Respondent's decisions would not constitute a disproportionate interference with their Article 8 rights, notwithstanding the sympathy evoked by the circumstances - to which the Judge makes express reference at paragraph 21.
21. In her oral submissions Ms Ammal essentially reiterated the merits of the case to an extent that I was required to intervene and invite her to direct my attention to any particular error of law: her response was essentially "*you can't define human rights, each case depends on its facts*" before

adding that the Judge had not given "*due weight*" to the circumstances, and inviting my attention to the supporting medical evidence in respect of the First Appellant. Necessarily I consider such submissions to be no more than an attempt to re-argue the issues in, and merits of, the appeal – but in doing so they failed to identify any relevant error of law.

22. In all such circumstances I find no material error of law.

Notices of Decision

23. The decisions of the First-tier Tribunal contained no material errors of law, and accordingly the decisions stand.

24. The appeals of each of the Appellants are dismissed.

25. No anonymity order is sought or made.

Deputy Judge of the Upper Tribunal I. A. Lewis 17 June 2015