Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/48787/2013

THE IMMIGRATION ACTS

Heard at Newport
On 15 May 2015

Decision & Reasons Promulgated
On 12 June 2015

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

JANVIERE INGABIRE
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr C Price instructed by Rotherham & Co Ltd Solicitors
For the Respondent: Mr I Richards, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is a citizen of Rwanda who was born on 24 March 1980. She came to the UK in January 2010 as a student. On 31 October 2011, the appellant was granted further leave to remain in the UK as a Tier 1 (Post-Study Work) Migrant until 18 October 2013.

2. On 17 October 2013, the appellant applied for further leave to remain. The basis of her application was that she was the carer of Mrs Stanway with whom she lived. On 11 November 2013, the Secretary of State refused the appellant further leave to remain and made a decision to

remove her by way of directions under s.47 of the Immigration, Asylum and Nationality Act 2006.

3. The appellant appealed to the First-tier Tribunal. In a determination promulgated on 17 September 2014, Judge Warren L Grant dismissed the appellant's appeal under Art 8 of the ECHR.

4. The appellant sought permission to appeal to the Upper Tribunal. Permission to appeal was initially refused by the First-tier Tribunal but on 18 February 2015 the Upper Tribunal (DUTJ Bruce) granted the appellant permission to appeal. In essence, on the basis that:

> "… it is certainly arguable that the Tribunal erred in its approach to Art 8, it is further arguable that the Tribunal did not give adequate consideration to the respondent's 'Carers Policy'".

5. Thus, the appeal came before me.

Discussion

6. Mr Price first relied upon the respondent's "Carers Policy" in IDI, chapter 17, s.2-Carers (at pages 76-87 of the appellant's bundle for the FTT). He submitted that the appellant fell within para 17.3 of the policy and he relied upon two letters, one from Dr SRM Brooke dated 17 March 2014 (at page 35 of the appellant's bundle) and one from Dr Miller dated 6 September 2013 (at page 37 of the bundle). He submitted that, contrary to the judge's finding in para 8, these reports identified a "need" for Mrs Stanway to be cared for by the appellant as a result of her health, in particular a painful muscular condition from which she suffered known as Polymyalgia Rheumatica.

7. Mr Richards, on behalf of the Secretary of State submitted that the appellant could not succeed under the Carers Policy as it was clear from para 17.9, which applied to the appellant, that applications for leave to care for a sick or disabled friend would normally be refused unless, for example, there was an emergency. Mr Richards submitted that the judge's findings in para 8 of his determination were properly open to the judge. There was, he submitted, no need for the appellant to provide the care to Mrs Stanway as claimed.

8. Paragraphs 17.3 and 17.3.1 of the Carers Policy deal with applications for "leave to remain" and the grant of "an initial period of leave to remain" as follows:

> "**17.3 Leave to Remain**
>
> Whilst each case must be looked at on its individual merits, when considering whether a period of leave to remain should be granted, the following points are amongst those that should be borne in mind by caseworkers:
>
> - the type of illness/condition (this should be supported by a Consultant's letter); and

- the type of care required; and
- care which is available (e.g. from the Social Services or other relatives/friends); and
- the long-term prognosis.

Caseworkers should be aware that while most applications will come from carers who are in the UK as visitors this will not always be the case.

17.3.1. Granting an initial period of leave to remain

Where the application is to care for a sick or disabled ***relative*** it will normally be appropriate to grant leave to remain for 3 months on Code 3 (no recourse to employment or public funds) **outside the Rules.**

The applicant ***must*** be informed that leave has been granted on the strict understanding that during this period arrangements will be made for the future care of the patient by a person who is not subject to the Immigration Rules.

The following wording must be added to the grant letter:

'I must advise you/your client that this leave has been granted exceptionally outside the normal requirements of the Immigration Rules to enable you/your client to make permanent arrangements for the future care of your/his/her relative, by a person who is not subject to immigration control. It is unlikely that any further leave will be granted on this basis'."

9. Paragraphs 17.4 and 17.4.1 deal with an application for a "further period of leave to continue" (my emphasis) to care for a sick relative or friend and the period of leave which will be granted. In other words, they deal with situations where an individual seeks an extension of existing leave as a carer granted under the policy.

"**17.4 Requests for further leave to remain**

Where an application is received requesting a further period of leave to continue to care for a sick relative or friend further detailed enquiries must be made to establish the full facts of the case. The applicant must produce the following:

- a letter from a registered medical practitioner who holds an NHS consultant post with full details of the condition/illness and long term prognosis; and
- a letter from the local Social Services Department, where they are known to be involved, advising of their level of involvement, the perceived benefits of the presence here of the applicant, and an explanation as to why suitable alternative care arrangements are not available.
- Any further evidence that alternative arrangements for the care of the patient have been, or are being, actively explored. For example, whether contact has been made with voluntary services/charities to see if they can assist or whether the possibility of private care has been costed and assessed. (a previous grant of a 3 month extension should have been

accompanied by a letter explaining that the extension was granted to enable such arrangements to be made, described in paragraph 4 above); and

- full details of the patient's family in the United Kingdom, the degree of relationship, and, if applicable, details of how the patient was previously cared for and why these arrangements are no longer considered suitable and/or are no longer available; and
- details of the applicant's circumstances in his home country, such as whether he has a spouse and children, the type of employment and other relevant family circumstances (as a general rule a person seeking to remain in the United Kingdom on a long term basis as a carer should normally be unmarried and have no dependants); and
- evidence that there are sufficient funds available to maintain and accommodate himself/herself without working or recourse to public funds.

Caseworkers should be aware that the fact that we may have previously granted an applicant leave to remain as a carer does not give rise to a legitimate expectation that we should grant again.

The enquiry letter in Annex B can be used in cases where an applicant is applying for leave/further leave to remain on the basis that they are caring for a sick relative or friend. Caseworkers should note however, that the letter's questions are not exhaustive and should be amended to fit the particular circumstances of the case.

17.4.1. Granting a further period of leave to remain

In cases where there are sufficient exceptional compassionate circumstances to continue the exercise of discretion, leave to remain may be granted for up to 12 months at a time, on Code 3 (no recourse to employment or public funds). In wholly exceptional circumstances Code 1A (access to employment and public funds allowed) may be appropriate but such a decision must not be taken without the agreement of a Senior Caseworker.

In all cases it ***must*** be made clear to the carer that we are acting exceptionally outside the Immigration Rules. The wording in section paragraph 3.1 can be added to the grant letter."

10. Mr Price submitted that para 17.3 applied to the appellant. In my judgment, it does not. As para 17.3.1 makes plain, what is being considered in 17.3 is a grant of leave to care for a "sick or disabled relative". Mrs Stanway is not a relative of the appellant. I accept that para 17.4, dealing with the grant of a "further period of leave" applies both to an individual seeking leave to care for a sick relative or friend but that also has no application here as this is the initial (and not a further) application by the appellant for leave.

11. I accept Mr Richards' submission that it is para 17.9 which deals with applications by, and the grant of leave to, carers of sick or disabled friends. That provides as follows:

"**17.9 Leave to Remain – Carers for friends of a sick or disabled person**

Applications for leave to remain in order to care for a sick or disabled ***friend*** should normally be refused. However, in an emergency (e.g. where the patient has suddenly fallen ill and there is insufficient time to arrange permanent care or where there is nobody else in the United Kingdom to whom the patient can turn) it may be appropriate to grant leave.

Caseworkers should request written confirmation from the sponsor that the applicant is his/her friend. The sponsor will need to indicate how long he has known the applicant and will need to confirm that s/he agrees that the applicant can act as his/her carer. If this is not possible, caseworkers will need to request such confirmation from the sponsor's relatives.

Where appropriate, leave to remain may be granted for a period of 3 months on Code 3 (no recourse to employment or public funds) outside the immigration rules. An extension of further leave should not be given unless there are ***wholly exceptional circumstances***. Such circumstances could include where the sponsor is terminally ill and has no Social Services or family support available."

12. Clearly, that is the applicable provision for an initial application for leave as a carer of a friend and any further applications after that are dealt with by paras 17.4 and 17.4.1 which I have set out above.

13. Paragraph 17.9 makes plain that application for leave to remain as a carer of a sick or disabled friend "should normally be refused". An emergency situation is given as a possible context in which it might be appropriate to grant leave.

14. With those provisions in mind, I turn to how the judge dealt with the evidence and the need for the appellant to care for Mrs Stanway at paras 7 and 8 of his determination as follows:

"7. I note from the evidence of Dr James Miller which appears at page 37 of the bundle that Mrs Stanway, who is nearly 81 years old, has made a full recovery from open heart surgery which she underwent in 2008. I note that she was diagnosed in February 2014 with Polymyalgia Rheumatica and that the GP states that by the date of his letter she had recovered. He states that she recovered largely with the help of the appellant. He makes no mention of any treatment or medication and there is no evidence that Mrs Stanway whose appearance and demeanour belies her age requires care let alone 24 hour care. His letter notes that the appellant 'lives with her and cares for her … while holding down a full-time job.' In this context I refer to the payslips and bank statements which show that she works in a care home for St John Care Trust.

8. I find that the appellant has been living with Mrs Stanway since January 2010 as she claims and I have no reason to believe that she is not a model tenant who takes care of Mrs Stanway's needs when she is at home. However she cannot be at Mrs Stanway's

> home to provide care at all times because her payslips show that she works nights and weekends and although my copies are not easy to read I find that she works over 60 hours per month at night and over 60 hours at weekends in order to earn as much money as possible from a profession which is not well paid. I do not find that the appellant works nights every week or that she works every weekend but the evidence shows that she works so often during what I might describe as unsociable hours that she is not available to Mrs Stanway even if there was a need for her services which I find on the basis of the evidence there is not. The appellant may consider that theirs is a mother/daughter relationship but at the same time I am asked by the appellant to take into consideration the respondent's policy regarding carers. Although children do care for elderly parents I find that the two categories namely parent/child and patient/carer are in this case mutually exclusive. There is no evidence of any need for the latter and no evidence of a relationship which would even begin to constitute family life. The points raised by Miss Riaz in her submissions were I regret to say disingenuous."

15. Mr Price submitted that the judge had wrongly concluded in para 8 that there was no "need" for the appellant to provide care to Mrs Stanway.

16. What, then, did the two letters from Dr Miller in September 2013 and Dr Brooke in March 2014 say about Mrs Stanway's health? In his letter of 6th September 2013, Dr Miller said this:

> "Miss Stanway joined this Practice in 1997 when she came to Cirencester, a strong energetic woman, with a healthy regard for life.
>
> In 2008, however, she had major heart surgery – a triple by-pass and also a replacement Aortic Valve. She made a swift and healthy recovery. However in February this year she was diagnosed with Polymyalgia Rheumatica (PMR) which severely affected her but from which she has recovered largely with the help of Miss Janviere Ingabire, who lives with her and cared for her during this difficult time whilst also holding down her own job.
>
> Miss Stanway is recovering well and generally enjoying life again, but PMR is exhausting by nature, attacking the muscles with pain and weakness. Obviously this curtails activity demanding immediate rest.
>
> It is imperative that Miss Stanway has the required help on hand and Miss Ingabire is clearly able to supply what is needed. I therefore recommend that consideration is given to extending Miss Ingabire's Visa."

17. Dr Brooke's letter of 17 March 2014 was in much the same terms as follows:

> "I have known Ms Stanway for about 23 years; initially I was her NHS GP and then for the last few years she has consulted me privately over various health issues.
>
> Ms Stanway suffers from a painful muscle condition called Polymyalgi Rheumatica and an irregular heartbeat called Atrial Fibrilation and as a result she suffers from intermittent pains in her back and legs and at

> times feels very fatigued and requires help with carrying things. She takes medication to control the heart beat and enhance the free flow of her blood.
>
> I have been asked to assess the likely impact on Dot Stanway if Janviere Ingabire were no longer living with her. Ms Stanway tells me that this would be like losing a daughter and that she would miss her terribly. Janviere usually cooks the meals, helps to wash the dishes, keeps the house clean, changes the bed linen and sometimes assists Ms Stanway with the shopping.
>
> Ms Stanway tells me that if Janviere were to leave then she would immediately lose a great deal of practical help at home but that primarily she would suffer an overwhelming sense of loss as though she had lost a close member of the family. Ms Stanway would find life harder from both a practical and an emotional perspective. A secondary consequence would be that Ms Stanway would be likely to need help from the social services sooner and to a greater degree."

18. It is not entirely clear to me why Judge Grant interpreted this evidence as not identifying any "need" for support for Mrs Stanway and her every day care. These letters, together with the evidence of the appellant (see pages 18-19) and Mrs Stanway recognise that she requires support, for example, in her every day domestic needs such as cooking meals, washing dishes and keeping the house in which she lived with the appellant running. That need is derived from the consequences of Mrs Stanway's medical condition which leaves her with intermittent back pain and at times being "very fatigued".

19. It may be, however, that what Judge Grant meant in para 8 is not that Mrs Stanway does not have a need for domestic support but rather that it is not established that that need must be met by the appellant. I confess, however, that I find para 8 of Judge Warren's determination unclear. To the extent that he finds that Mrs Stanway has no "need" for support, that finding 'flies in the face' of the evidence. More likely, he was concluding that, despite that need, it was not established that it had to be met by the appellant. That was a finding that was properly open to him on the evidence.

20. I acknowledge that Mrs Stanway considered that the appellant was like "a daughter" to her (see her witness statement, pages 22-24 of the appellant's bundle at para 5-6). That did not, however, establish that the appellant was the indispensible provider of care to Mrs Stanway. The relationship between Mrs Stanway and the appellant developed over the period of time following the appellant moving in as a tenant in January 2010 when she was a student. It is clear from the evidence that Mrs Stanway came to rely upon her and formed a relationship with her. They clearly got on. However, Mrs Stanway was in receipt of attendance allowance in order to provide support and, it appears from Dr Brooke's letter, her finances allowed her to consult him privately over her health. Just as Mrs Stanway found the appellant, as her residential tenant, was someone whom it was appropriate to provide her with domiciliary support

and care so Mrs Stanway could in the future obtain similar support from another tenant or person whom she paid to provide that support. There is no solid basis for reaching any contrary conclusion on the evidence. Indeed, as a long stop, if Mrs Stanway's need become sufficiently acute, given her age, there is always the possibility of social services' involvement and support. It is not suggested that Mrs Stanway's situation is such that that position has yet been reached.

21. In my judgment, even accepting Mrs Stanway's "need" for some domiciliary support, the appellant had no prospect of succeeding under para 17.9 of the Carers Policy. The circumstances were not such that there was any basis for departing from the "normal" result that applications for leave to remain in order to care for a sick or disabled friend should be refused. This was not an emergency and there was nothing exceptional about the circumstances to require an exercise of discretion in favour of the appellant.

22. For these reasons, therefore, I reject Mr Price's submission that the judge materially erred in law by failing to apply the Carers Policy in the appellant's favour.

23. In relation to Art 8, Mr Price made two principal submissions. First, he submitted that the judge had failed properly to apply Art 8. In particular, he submitted that the judge should have found that there was "family life" between the appellant and Mrs Stanway and the appellant and Mrs Stanway's family members. He relied upon Mrs Stanway's evidence that the appellant was like a daughter. He also relied upon the evidence of Mrs Stanway's brother, Roger Stanway and his letter dated 16 February 2014 (at page 32 of the appellant's bundle) that the appellant was "one of our extended family". He submitted that the judge was wrong to find in para 8 that there was "no evidence of a relationship which would even begin to constitute family life".

24. In order to establish "family life" under Art 8, the appellant must establish that there are "close ties" of sufficient strength to amount to "family life". Approaching that issue, regard must be had to emotional, financial or other dependency between the individuals.

25. Here, there is no doubt that Mrs Stanway enjoyed a close relationship with the appellant. There is also no doubt that, on a day-to-day basis, she relies upon the appellant for support. That support began when the appellant rented a room from Mrs Stanway. Despite the friendship which has clearly developed, the nature of the relationship between Mrs Stanway and the appellant cannot, in my judgment, properly be described as "family life". No doubt given their respective ages, and the close friendship that has developed, Mrs Stanway sees the appellant as being like a daughter. However, she is in fact not related to Mrs Stanway and is her tenant who provides domiciliary support because of Mrs Stanway's health. Mr Price informed me in the course of the hearing that the appellant no longer pays rent. No doubt that is a *quid pro quo* for the

support and care the appellant provides. That relationship, undoubtedly, amounts to private life but it is not of the quality or nature to have developed into family life. Further, despite the appellant's acceptance within Mrs Stanway's family, it is simply unarguable that she has established family life with other adult members of Mrs Stanway's family based upon her friendship and support for Mrs Stanway herself.

26. For these reasons, I reject Mr Price's submission that the judge erred in law by failing to treat the relationship between the appellant and Mrs Stanway and her family as amounting to "family life" under Art 8.

27. Turning now to Mr Price's other submission in relation to Art 8, he submitted that it was unreasonable not to allow the appeal under Art 8 given that the appellant could establish that she would be no cost to public funds and all the circumstances of the case.

28. The judge dealt in some detail with the law and Art 8 at paras 9-20 of his determination, applying the five stage approach in Razgar [2004] UKHL 27 and setting out in full ss.117A and 117B of the NIA Act 2002.

29. At paras 21-23, Judge Grant made the following findings:

> "21. The appellant entered the UK 12 January 2010 with leave to enter as a student which was valid until 30 September 2011 and which was then extended into the category of post-study worker until 18 October 2013. She has been working as a carer in a care home. She knew that her presence in the UK was for a limited time only and that there was no possibility of extending or varying her leave to enter under the Rules. She cannot be said to have been ignorant of the requirements of immigration control given that she had applied successfully for entry clearance and for a variation of her leave to remain. She has acquired education certificates, work skills and fluent English which she can utilise on return.
>
> 22. In the event that the proposed removal would be an interference of such gravity that it would engage the United Kingdom's obligations under Article 8 of the European Convention to respect the appellant's private and family life in the United Kingdom I find, taking full account of the relevant provisions of section 19 of the 2014 Act that the interference would be in accordance with the law and for the legitimate public end necessary in a democratic society of the maintenance of proper immigration control (see Shahzad (Article 8 legitimate aim) [2014] UKUT 00085 (IAC)).
>
> 23. For the avoidance of any doubt I find that the appellant has parents and siblings who still live in Rwanda. She gave evidence in fluent English but I find that she still speaks the language used in Rwanda. I refer to Ogundimu (Article 8 – new rules) Nigeria [2013] UKUT 00060 (IAC). I find that her social and cultural ties are to Rwanda and not to the UK."

30. Given that the appellant could not succeed under the Immigration Rules nor under the Carers Policy, the appellant had to establish that there were

"exceptional" or "compelling" circumstances such that the refusal of leave would result in unjustifiably harsh consequences (see R (Nagre) v SSHD [2013] EWHC 720 (Admin) and SSHD v SS (Congo) and Others [2015] EWCA Civ 387). The judge clearly had in mind that the appellant spoke English and, as he had previously set out in his determination, that she was financially independent. Both of those matters were ones which the judge was required to have regard to by virtue of s.117A(2) read with s.117B(2) and (3). However neither conferred a positive right to the grant of leave (see AM (s.117B) [2015] UKUT 260 (IAC)). The judge correctly directed himself as regards the applicable law and, in my judgment, cannot be said that his finding was irrational or otherwise unsustainable in law given his findings of fact including that the appellant had no expectation of remaining in the UK having only temporary leave initially as a student and subsequently under Tier 1 and retained ties with her own country, Rwanda. The "needs" of Mrs Stanway, but not necessarily the requiring the appellant to meet those needs, were not, in my judgment, "compelling" circumstances so as to justify the grant of leave outside the Rules.

Decision

31. For the above reasons, the First-tier Tribunal did not materially err in law such that its decision cannot stand in dismissing the appellant's appeal on all grounds.

32. No anonymity direction was requested by either party.

Signed

A Grubb
Judge of the Upper Tribunal

TO THE RESPONDENT
FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.

Signed

A Grubb
Judge of the Upper Tribunal