



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

Appeal Number: IA/02383/2015

THE IMMIGRATION ACTS

Heard at Field House

On 14 July 2016

**Decision & Reasons
Promulgated
On 28 July 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE I A M MURRAY

Between

**MS HELANA ABDELSHEHID MORCUS YOUSSEF
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Record, Counsel for David A Grand, London
For the Respondent: Mr Bramble, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Egypt born on 10 November 1940. She appealed against the decision of the Respondent dated 31 December 2014 refusing to vary her leave to enter or remain in the United Kingdom and giving directions for her removal under Section 47 of the Immigration, Asylum and Nationality Act 2006. Her appeal was heard by Judge of the First-tier Tribunal Flynn on 16 December 2015. Her appeal was dismissed under the Immigration Rules and on human rights grounds in a decision promulgated on 11 January 2016.
2. An application for permission to appeal was lodged and permission was granted by Judge of the First-tier Tribunal Hollingworth on 13 June 2016.

The permission states that there is an arguable error of law in relation to the Judge's finding that there is no family life, given the extent of the medical evidence and the significance of the level of care provided by the Appellant's son in the United Kingdom. The permission states that it is arguable that the Appellant's stable medical state, as the result of her son's care and attention, establishes a relationship between her and her son which goes beyond the normal ties of affection. The permission goes on to state that the Judge should have conducted a fuller proportionality exercise explaining the weight to be attached to relevant factors.

3. There is a Rule 24 response dated 29 June 2016. This states that although paragraph 65 of the decision is short, the Judge considered the relevant factors in the Appellant's case in terms of the proportionality assessment, at paragraphs 41 to 58 of the decision. These relate to a consideration of family and private life under the Rules. The response states that the failure to meet the terms of the Rules and the reasons given by the Judge would be applicable in any assessment outside the Rules. The Judge balances these factors against public interest and finds they are not sufficient to demonstrate that the decision to remove is disproportionate.
4. The Appellant attended the court in a wheelchair.
5. There were no preliminary matters.
6. Counsel for the Appellant submitted that the terms of paragraph 276ADE of the Rules, relating to reintegration in Egypt have been satisfied based on the medical reports produced on the Appellant in 2014 and 2015. She submitted that the Appellant has problems with her daily functions. She takes medication and her son helps with both of these things. She uses a stick to walk and she has impaired cognitive function which was accepted by the Judge. Counsel submitted that at paragraph 56 of the decision the Judge states that he finds the Appellant has not demonstrated that there are any very significant obstacles to her reintegration in Egypt. She submitted that this conflicts with the medical reports and the Appellant's son's evidence. It was submitted that the Appellant cannot establish a private life in Egypt as she has no-one there to care for her and her health has deteriorated considerably since the last time she visited her son in the United Kingdom. Counsel submitted that the Judge's decision goes against the weight of the evidence and the Appellant's health. She is dependent on her son.
7. Counsel submitted that the Judge considered the claim outside the Rules and she referred to the Rule 24 response. At paragraph 65 of the decision the Judge did not accept that Article 8 was engaged but she submitted that the relationship between the Appellant and her son goes beyond a normal adult relationship. She submitted that her son pays for her medical treatment and care and the Judge has made a material error of law, as the terms of paragraph 276ADE have been satisfied. She referred to the Appellant's dependence on her son.

8. I asked about the medical reports and she referred me to the 2014 reports and the subsequent reports carried out in 2015. These are referred to in the decision. At paragraphs 41 and 42 the Judge considers Dr Foale's report. The doctor refers to osteoarthritis, hypertension and diabetes. He states "*It should be emphasised that her very stable medical state is a result of the care and attention she receives from her son and this is proving effective*".
9. Counsel then referred to paragraph 43 and the report by Mr Winer in his Osteopathic and Diagnostic Clinic. She submitted that this states that the Appellant has to be supported by her son and she uses a walking stick. The report also states that she can only visit the toilet with the assistance of her son. She submitted that her son pays for her medical treatment in the United Kingdom. I asked about this and he has paid for hearing aids for the Appellant. Counsel submitted that all of the Appellant's medical care is paid for privately by her son and he has paid for all the medical reports and consultations, prescriptions, etc.
10. Counsel referred me to paragraph 45 of the decision in which the judge states that there is no other evidence to show that the Appellant is unable to walk without assistance and she referred me to the Appellant's statement and her son's statement.
11. Counsel then referred me to the two psychiatric reports referred to at paragraph 47 of the decision. Counsel submitted that these medical reports must go to her private and family life and are sufficient for her claim under the Rules to be successful.
12. I referred Counsel to paragraph 8 of the decision in which the Judge notes that the Appellant applied for a visit visa in 2014 and told the Judge that she intended to return to Egypt. She now states she has no-one to go back to there and I pointed out that that must have been the situation when she applied for the visit visa. Counsel submitted that her son was worried about the deterioration in her health since the last time he saw her, and that is why she made the application. She submitted that the Appellant's condition had changed by the time she visited in July 2014. She submitted that this is referred to in the decision at paragraph 22.
13. I referred Counsel to paragraph 57 of the decision in which the Judge states that the Appellant has also failed to show that she has sufficient financial resources to support herself in the United Kingdom without recourse to public funds. He stated that Mr Asad's (her son's) three payslips are not sufficient evidence of his financial means. The paragraph goes on to state that it is not clear that the Appellant and her son have sufficient resources to support her indefinitely in the United Kingdom. Counsel submitted that the Appellant's son owns a drinks company and I was referred to his statement in which he states that he takes full care of the Appellant and works nearby and his hours are flexible.

14. I was asked to find that there are material errors of law in the Judge's decision.
15. The Presenting Officer submitted that he is relying on the Rule 24 response.
16. He referred to the Judge's decision at paragraph 39 onwards. He submitted that the decision makes it clear that the Judge had all the medical evidence in mind when he reached his decision. He refers to all the reports in detail and once he has considered these comes to his conclusions. He refers to the Appellant's son leaving the Appellant on her own from two to six hours a day and the Presenting Officer submitted that in the decision the Judge has built a picture and has considered all the oral evidence, not just the medical evidence. He submitted that the Judge does not need to set out every document. What he has to do is understand all the evidence and weigh it up. He submitted that what Counsel is stating is that the Judge interpreted the evidence in the wrong way.
17. I was referred to paragraph 48 of the decision in which the Judge refers to Dr Elias stating that the Appellant's mental status remains unchanged with a result of 22 out of 30, with possible early stages of dementia. At paragraph 49 the Judge accepts that the Appellant has impaired cognitive function but that the condition appears to be stable. The Presenting Officer submitted that the Judge then goes on to consider all the factors in the round. At paragraph 50 he accepts that the Appellant's son cares for the Appellant but he goes on to refer to Dr Foale's report which indicates that the Appellant has been treated for her conditions in Egypt and there is no evidence that she would not be able to continue receiving appropriate treatment there which could be supplemented by her medical advisors in the United Kingdom on future visits. At paragraph 52 the Judge makes it clear that the Appellant has failed to demonstrate that she is unable to perform daily living tasks without assistance. He accepts that she has no family member in Egypt but finds that she could arrange for someone there to help her and continue to receive financial help from her son in the United Kingdom and perhaps her son in America as well. The Judge also found that she will have friends in Egypt who can help. She is a member of the church and the church community are likely to be able to help. The Judge states that he is satisfied that the Appellant has sufficient financial resources to help her to pay for whatever services she requires in Egypt.
18. The Presenting Officer at paragraph 55 refers to the Appellant being a Christian in Egypt but submitted that no evidence has been provided to show that she has had any problems because of this.
19. The Presenting Officer submitted that the Judge has considered all the factors in this claim and has found against the Appellant. He has given proper explanations for his findings. He submitted that for the Appellant to be unable to return to Egypt, there have to be very significant obstacles and he submitted that there are no such significant obstacles in this case.

20. The Presenting Officer referred to the problematic financial situation and submitted that he does not find this to be material.
21. The Presenting Officer then went on to deal with the Judge's findings on Article 8, at paragraphs 64 and 65 of the decision. He submitted that the Judge refers to the relevant case law and the Presenting Officer submitted that at paragraph 65 he states that he is not satisfied that the interference to the Appellant's family or private life is sufficient to engage Article 8, notwithstanding the low threshold. He submitted that all the Judge's findings on the Immigration Rules, the medical evidence and Article 8 within the Rules apply when Article 8 outside the Rules is considered. He submitted that all the relevant evidence has been taken into account. The case of **Razgar** is quoted and Section 117B of the Nationality, Immigration and Asylum Act 2002 is also referred to in connection with the maintenance of effective immigration control in the United Kingdom and public interest.
22. He submitted that the Judge finds that the necessity for effective immigration control outweighs this Appellant's Article 8 rights and when proportionality is assessed, the fact that the terms of the Rules cannot be satisfied has to be taken into account.
23. The Presenting Officer submitted that this Appellant came to the United Kingdom as a visitor and still states that she always intended to return to Egypt but he submitted that it is clear that the Judge did not believe that that was the case and the Judge has considered everything that was before him. He submitted that his decision should be upheld.
24. Counsel referred me to paragraph 49 of the decision in which the Judge accepts that the Appellant has impaired cognitive function. The Judge states that this appears to be stable and states that there is no evidence that the Appellant is unable to live alone or function without constant supervision. Counsel submitted that what the Judge did not take into account is that because of her medical conditions, which are dealt with in detail in the medical reports, paragraph 276ADE of the Rules can be satisfied as because of her health she will have difficulty reintegrating on return to Egypt.
25. She submitted that at paragraph 52 the Judge states that the Appellant failed to demonstrate that she is unable to perform daily living tasks without assistance and that her son cooks for her sometimes. Counsel submitted that the medical reports are clear. She cannot do daily tasks without assistance. She cannot walk on her own. She can be left alone when her son is at work but that is very different to leaving her on her own in Egypt.
26. Counsel submitted that the medical tests and reports are directly applicable to paragraph 276ADE of the Rules and that the Article 8 assessment outside the Rules should have weighed in her favour because of her dependence on her son in the United Kingdom. She submitted that

because of their special relationship the threshold of Article 8 has been satisfied. She submitted that paragraph 65 of the decision is wrong.

27. With regard to the Appellant's son's financial situation, she submitted that he showed the Tribunal payslips and a receipt for the hearing aids he has purchased. She submitted that there are material errors of law in the decision and that the Appellant's intention on arriving in the United Kingdom on a visit visa was to return to Egypt. It was only when her son saw the deterioration in her health since the last time he saw her a year ago, that she applied to remain here. She submitted that the medical reports should be found to form very compelling obstacles, preventing her return.
28. I was asked to set aside the First-tier decision and allow the Appellant's appeal.
29. The grounds of application state that the IDI on Family Migration (August 2015) state that paragraph 276ADE(1)(vi) would be met "*if establishing a private life in the country of return would entail very serious hardship for the Applicant*". The grounds state that based on the medical evidence and the oral evidence before the Judge, that is the case here and the evidence discloses a degree of dependency and overall environment that would entail very serious hardship if the Appellant has to go back to Egypt. The grounds also refer to the Appellant's stable medical state being as a result of the care and attention she receives from her son. The medical reports refer to him being a devoted and capable carer. The grounds state that the Judge's decision is irrational and against the weight of the evidence.
30. I have carefully gone through the decision and in paragraphs 41 to 49 the Judge has adequately considered in detail all the medical reports and the consequences of the Appellant's health. He is not satisfied that the evidence shows that the Appellant is unable to live alone or is unable to function without constant supervision which the Appellant's son states is the case. Her son stated that the Appellant's health had deteriorated significantly around the beginning of 2014 but the Judge points out that there is no evidence to support this in any of the medical or psychiatric evidence provided. Paragraph 51 significantly refers to Dr Foale stating that the Appellant has been treated for her conditions in Egypt. There is no evidence that she would not be able to continue receiving appropriate treatment there. He finds that her evidence that she could not get any assistance in Egypt is not credible. She has lived there all her life. She has friends there. Her son financially can support her when she is in Egypt and can get help for her there. The Judge finds at paragraph 54 that the Appellant has no family member in Egypt but refers to friends, people from the church and a sufficiency of financial resources to help her to pay for whatever services she requires.
31. The Judge has carefully considered all the evidence before him and finds that there are no very significant obstacles to her reintegration in Egypt. He has properly explained this finding and based on this finding he finds

that paragraph 276ADE(1)(vi) cannot be satisfied and so this Appellant's claim must fail under the Immigration Rules.

32. There was also an issue about the lack of evidence of the Appellant's and her son's financial resources but based on the Judge's findings this is not material.
33. The Judge then goes on to deal with Article 8 outside the Rules and refers to the relevant case law. He has considered Section 117B of the 2002 Act relating to public interest and effective immigration control. He has applied the five step test laid down in **Razgar**. He accepts that she and her son have a strong bond but does not find that it goes beyond normal ties of affection between mother and son. At paragraph 63 he finds the Appellant has not established a significant degree of private life in the United Kingdom and he has explained this finding in his decision. He refers to her precarious status.
34. At paragraph 64 he finds that for her to return to Egypt would not be a disproportionate interference with her family or private life and at paragraph 65 states that any interference would not be sufficient to engage Article 8 notwithstanding the low threshold. It has been argued before me by Counsel that this has not been properly explained but the Judge's findings relating to the Immigration Rules, in particular paragraph 276ADE and all the medical reports, are clearly the reason he has come to this conclusion at paragraph 65. It is not necessary for him to repeat all these findings at this point in his decision. He has already explained everything throughout the decision. He has found that the terms of the Immigration Rules cannot be satisfied and this has to be taken into account in his proportionality assessment and must weigh against the Appellant.
35. At paragraph 69 the Judge states that the Respondent's duty of maintaining effective immigration control outweighs any interference with Article 8. Counsel submitted that the Appellant's son pays for all her medical treatment. I know that he has purchased hearing aids, he has probably paid for the private medical reports but we have no other evidence of him paying for medical treatment. This is an important issue when public interest is being dealt with.

Notice of Decision

36. I find that there are no material errors of law in Judge Flynn's decision promulgated on 11 January 2016 and that his decision should stand. The Appellant's appeal is dismissed under the Immigration Rules and on human rights grounds.
37. No anonymity direction is made.

Signed

Date **28 July 2016**

Deputy Upper Tribunal Judge I A M Murray