



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/14921/2014

THE IMMIGRATION ACTS

Heard at Field House
On 19 February 2016

Decision & Reasons Promulgated
On 26 February 2016

Before

UPPER TRIBUNAL JUDGE HANSON

Between

MRS MAHBOUBEH SEPEHRI
(Anonymity direction not made)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms J Fisher instructed by VC Legal UK

For the Respondent: Mr J Parkinson – Senior Home Office Presenting Officer.

DECISION AND REASONS

1. This is an appeal against a determination of First-tier Tribunal Judge M A Khan promulgated on the 4 September 2015 in which the Judge dismissed the appellant's appeal under both the Immigration Rules and Article 8 ECHR.
2. The appellant is a citizen of Iran born on the 21 March 1946. The appellant's sponsor is her adult daughter. The appellant's application for leave to enter the United Kingdom as the adult dependant relative of her daughter was refused by

an Entry Clearance Officer (ECO) on 20 October 2014. The application was refused by reference to paragraphs EC-DR.1.1 (d), E-ECDR 2.4 and E-ECDR2.5 of the Immigration Rules. These parts of the Rules provide:

Section EC-DR: Entry clearance as an adult dependent relative

EC-DR.1.1. The requirements to be met for entry clearance as an adult dependent relative are that-

- (a) the applicant must be outside the UK;
- (b) the applicant must have made a valid application for entry clearance as an adult dependent relative;
- (c) the applicant must not fall for refusal under any of the grounds in Section S-EC: Suitability for entry clearance; and
- (d) the applicant must meet all of the requirements of Section E-ECDR: Eligibility for entry clearance as an adult dependent relative.

Section E-ECDR: Eligibility for entry clearance as an adult dependent relative

E-ECDR.1.1. To meet the eligibility requirements for entry clearance as an adult dependent relative all of the requirements in paragraphs E-ECDR.2.1. to 3.2. must be met.

Relationship requirements

E-ECDR.2.1. The applicant must be the-

- (a) parent aged 18 years or over;
- (b) grandparent;
- (c) brother or sister aged 18 years or over; or
- (d) son or daughter aged 18 years or over of a person (“the sponsor”) who is in the UK.

E-ECDR.2.2. If the applicant is the sponsor’s parent or grandparent they must not be in a subsisting relationship with a partner unless that partner is also the sponsor’s parent or grandparent and is applying for entry clearance at the same time as the applicant.

E-ECDR.2.3. The sponsor must at the date of application be-

- (a) aged 18 years or over; and
- (b) (i) a British Citizen in the UK; or
- (ii) present and settled in the UK; or
- (iii) in the UK with refugee leave or humanitarian protection.

E-ECDR.2.4. 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.

E-ECDR.2.5. 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. At paragraph 37 of the determination the Judge found:

"On the evidence before me, on the balance of probabilities, for the above-mentioned reasons, I am not satisfied that the appellant meets all the requirements of paragraphs EC-DR.1.1(d) (E-ECDR 2.5) and (E-ECDR.3.1) Appendix FM of the Immigration Rules of the Immigration Rules, HC 395."

4. In relation to Article 8 ECHR outside the Rules the Judge sets out the Razgar questions [38] before stating at [39]:

"In this case, the appellant does not meet the requirements of the Immigration Rules. There is evidence before me that the appellant's family in the UK regularly visit her in Iran. The sponsor came to settle in the UK in 2001 and her husband in 2008. Before the son in law came to live in the UK he had a longstanding medical practice in Iran. The couple have a young child born in the UK. The couple can choose to return to live in Iran and continue with their family life with the appellant. The appellant has always lived in Iran and her family and private life is in that country."

5. The decision under challenge is set out at paragraph 40 in which the Judge dismissed the appeal. The findings at [30-39] are the 'stepping stones' by which the Judge arrived at that conclusion.

Discussion

6. It is accepted there is a lack of care demonstrated in the determination such as the use of the words 'clasped' and 'coolapsed' rather than 'collapsed' in [33] and the claim "The appellant made an application for entry clearance to join his adoptive father who also happens to be his maternal uncle, in the United Kingdom" [31] which is factually incorrect. I do not find these matters material as it is clear some are proof reading errors and a reading of the determination as a whole shows the Judge was aware of the real reason for the application and the issues at large.

7. Ground 1 of the challenge asserts the Judge failed to make a finding in relation to E-ECDR 2.4. Whilst there is no specific finding this element of the Rule is satisfied it is clear from paragraph 37 of the determination that the Judge does not refer to this part when setting out why the appeal under the Rules must fail. It can be inferred, therefore, that this element is met and that it had been shown that the appellant as a result of age, illness or disability requires long-term personal care to perform everyday tasks. No arguable legal error is established.

8. Ground 2 asserts the Judge misunderstood the evidence in relation to the ability of the appellant to function in her home, but the finding in relation to 2.4 is relevant to this issue and to the appellant's functioning as an individual, at least it appears until she has knee replacement surgery.
9. The core of the claim is that the appellant is an elderly lady who lives in Tehran who is not coping well following the death of her husband in 2009. The appellant lived in her daughter's house which unfortunately collapsed as a result of building work being undertaken on an adjoining plot in a negligent manner on 2 June 2014. Papers have been produced together with photographs in relation to the event and claims arising therefrom. The value of the daughters land is said to be in the region of £200,000.
10. The appellant was trapped in the rubble from the collapse and was saved by a neighbour. It is said that as a result of her experiences the appellant has lost her confidence and suffers from PTDS and anxiety when alone and has a fear of buildings, the wind, and being alone. The appellant has mobility issues as she is not able to move around freely due to bad knees and had the assistance of her neighbours to help with shopping for groceries. The appellant is in a flat rented by her daughter and so the neighbour is unable to a help as they live elsewhere too. It is said the appellant suffers from depression which has resulted in her not caring for herself and not asking her new neighbours for assistance as a result of which it is said she has lost weight.
11. The medical evidence was considered by the Judge. A translation of a letter dated 17 June 2014 written by a Dr Semnani states:

"This is hereby to certify that:

Mahboubeh Sepehri suffers from acute stress disorder pursuant to the created incident; meanwhile she has to be medicated by medicines and family support.

This certificate is issued upon the application of the interested party to submit To Whom It May Concern

Dr Yousej Semnani

Psychiatrist

Medical Council No. 57085"
12. A letter written by a Dr Hasan Avarseji, dated 5 July 2014, is in the following terms:

"To whom it may concern

Mrs Mahboubeh Sepehri is a patient of mine who is unfortunately suffering from a severe form of PTSD (Post-Traumatic Stress Disorder).

Her home in Tehran collapsed around four weeks ago and she was narrowly saved from rubbles.

Since then she has severe anxiety, insomnia, flashbacks, nightmares and depression. She can't stay alone in a room due to constant fear of building collapsing on her.

Considering that she is a widow and her only child is living abroad, she will need long-term 24 hour care preferably with her daughter.

I do not recommend any other carer such as psychiatric nurse for her as she is psychologically very dependent on her daughter. Using psychiatric nursing service on a long term basis is neither practical nor affordable for this lady.

Dr Hasan Avarseji MD

Consultant Neurologist"

13. A translation of the attendance of an ambulance at the site of the collapsed property on the 2 June 2014 is provided [A's bundle p. 25-30].

14. At [A's bundle. P. 34-36] is a further report written in English by Dr Moshen Mobasheri, psychologist, concerning PTSD in the following terms:

"To whom it may concern.

Mrs Mahboubeh Sepehri is a 68 year old lady who has suffered a very stressful experience when her house was demolished about two months ago. Although she was rescued by neighbours a significant mental scar has remained.

This condition is called PTSD = Post-Traumatic Stress disorder, in medical terms.

She has flashbacks and cries a lot.

Considering her associated physical disabilities she needs continual professional physical and mental care.

To my knowledge this is not available in Iran.

Dr Mohsen Mobasheri"

15. At [A's bundle. P. 64-65] is a further medical report from Y. Semnani MD dated 25 July 2015 claiming that the appellant 'has been visited since June 2014 and has been prescribed medication but it has not had any definite effects'. The note continues: "It is advisable to manage by psychiatric nursing which is not available in Iran".

16. At [A's bundle. P. 66-68] is a letter from an orthopaedic surgeon in Iran stating that the applicant has severe osteoporosis as a result of which she is house bound. It is said the appellant has been offered total knee replacement surgery but so too frightened to undergo surgery [page 66].

17. It is said the Judge erred in that although there is good physiotherapy available in hospitals in Iran facilities are not available in the home. It is also stated the Judge

failed to consider the lack of care for the appellant's mental health needs when concluding at paragraph 34 of the determination:

"The appellant's son in law said that the appellant needs both knee replacement but this cannot take place until her mental condition is stable. His evidence is that there are medical facilities in hospitals in Iran and home help can be hired, although this is not professional help as in the UK. I find that the appellant's needs are to be assessed in the context of the circumstances in Iran and not the United Kingdom. The appellant is in a much better situation than many other Iranians in that she her daughter and son in law are in a position to afford to hire care for the appellant. The appellant herself is also financially well off in that I was told that the land on which the family home stood is worth over £200,000."

18. The appellant's son in law, who is an orthopaedic surgeon in the UK, gave evidence that the appellant's physical condition was complicated by her PTSD and the fact she was not responding to treatment and that there could be no operation to replace the appellant's knees in her current mental state.
19. The overall situation of the appellant was not disputed before the Upper Tribunal. The Entry Clearance Office in relation to the availability of care in Iran states in the refusal notice:

'Furthermore, if you demonstrate that you require long term care I must also be satisfied that this care cannot be received in your home country. The medical issues outlined in the documents provided can be treated in Iran. A World Health Organisation policy report into the nationwide integration of mental health into primary care states "*Nationwide expansion of primary care during 1980's provided a good opportunity for integration of other health programmes. In 1989, mental health was integrated as a component of primary care, long before many other diseases. In some districts, one psychiatrist is available to provide specialist mental health services. Otherwise, a specially trained practitioner provided mental health coverage. The district health centre accepts mental health referrals from urban and rural health centres, but sometimes refers difficult cases to the provincial health centre. There are 40 health centres in 30 provinces – some provinces have more than one medical university, who are responsible for both health services in the catchment area and medical education. The mental health units in these services are staffed by one psychiatrist and one psychologist, who are responsible for the technical, organizational, and administrative management of the services in the periphery. There are also specialist mental health services, mostly based in psychiatric hospitals or psychiatric wards of general hospitals, that provide mental health services to patients from district and other urban centres.*

I note you have stated that you have 2 sisters and a brother living in Iran and that you see them annually. You have not demonstrated that they are to in a position to assist you.'

20. At paragraph 20 of the determination the Judge records a matter arising from cross examination:

"The sponsor said that she and her husband earn combined income of £10,000 per month. She said that she did not make enquiry about the nursing home, she asked a

friend who now lives in the USA and his elderly mother is in a Nursing Home. She said that she did not know that she would need evidence of any enquiry concerning a nursing home. She said that she did not want to put her mother in a nursing home.”

21. The Upper Tribunal made it known at the hearing that it has judicial notice that there are approximately 44 public and private nursing homes in Tehran, caring for over 2,550 elderly residents in 2013. The cultural norm of the family providing care for the elderly is noted but this is not the case for all, and in a family where members are in the UK and family in Iran are unable to provide the degree of care provided the available resource cannot be ignored in the assessment of the claim.
22. The reply recorded above highlighted the contrasting approaches of the parties in the case. The appellant’s stance and that of her sponsor is that they want to succeed and for the appellant to be able to join her daughter and her family in the UK. The respondent’s position is that this can happen but only if it is demonstrate that the requirements of the Rules can be satisfied. The appellant has obtained evidence in relation to her physical and psychological issues but undertaken little investigation from all available sources to shown those needs cannot be met in Iran. Whilst this is understandable as the sponsor clearly wants her mother to be permitted entry, a court of Tribunal is required to consider all the available evidence.
23. Paragraph 2.5 of the Rules provides that a person must show that the required level of support “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.”
24. The first stage must be to furnish detailed evidence of the needs of an individual. Although some material has been provided it is clear this is limited to short notes. For example, it is said the appellant suffers from PTSD following the collapse of her house in 2014. PTSD is Post-traumatic stress disorder which is an anxiety disorder caused by very stressful, frightening or distressing events. Within the NHS and other countries mental health services PTSD can be successfully treated, even when it develops many years after a traumatic event.
25. Treatment options may be recommended include watchful waiting – monitoring symptoms to see whether they improve or get worse without treatment, psychotherapy – such as trauma-focused cognitive behavioural therapy (CBT) or eye movement desensitisation and reprocessing (EMDR) and the use of antidepressants – such as paroxetine or mirtazapine.
26. The evidence refers to some intervention but fails to comment upon the criteria for diagnosis and how this is met and to what degree, the treatment plan in detail

including time scales and ongoing intervention, the purpose of the medication including dosage and actions taken to change dosages/nature of medication if the current prescription is not working, whether there is evidence of the appellant being compliant, whether there was any evidence of mental health issues before the collapse of the building. It is noted the appellant has found life difficult since the death of her husband in 2009 but little is said of this in the evidence.

27. In relation to PTSD, extensive research has been carried out to show the effectiveness of cognitive behavioural therapy (CBT) intervention approaches to treating posttraumatic stress disorder (PTSD). There is no mention of this being tried and the effectiveness of the same in the medical letters, indicating an effective line of therapy may not have been tried.
28. The evidence is limited on availability of help. It has not been shown help is not available. It was said at the hearing this is not the issue which is that the type of help required is not available in the home. If care within a residential setting is required it has not been shown the same cannot be sourced on a private basis if required in a care home environment, if this is the only available option. The medical notes refer to the fact mental health nursing is available but fails to provide detail of the costing to show it, or residential care, is prohibitive. Generalised statements are not sufficient especially when it is admitted such enquires have not been made as the sponsor does not want to entertain this option.
29. The finding of the Judge that it has not been shown the required level of care is not available or not affordable is within the range of findings the Judge was entitled to make on the available evidence, in relation to both the appellant's physical and psychological needs.
30. The Judge is criticised for finding the sponsor and her family can go and live in Iran to care for the appellant [39]. Whilst this is an option if the family choose to return, the Judge was required to consider that the sponsor's child is a British citizen born in the UK and that living in Iran would take the child outside the EU. It was necessary for this to be assessed on the basis of the reasonableness of the decision which the Judge failed to do. Any such error is not, however, material.
31. Submissions were made in relation to the desire to develop the family life between the appellant and her daughter in the UK by enabling the appellant to enter the UK to live with her daughter and her family. Whilst there is a positive obligation upon a State to facilitate the development of family life in the future, if the test is one of proportionality, the balancing exercise is the same as for any family life Article 8 claim. It is a fact sensitive assessment.
32. The sponsor is also now back in the UK with her family. Contact is maintained indirectly with her mother but someone must be providing for her needs showing the required level of day to day care is available, even if it has to be paid for.

33. It has not been shown that the required level of care is not available in Iran or that it is unaffordable. An income of £10,000 per month has not been shown to be insufficient, even allowing for UK expenses, and capital assets worth of £200,000 in Iran are available.
34. Article 8 does not permit a person to choose where they wish to live and should not be used as a means to circumvent the Rules. The function of this Article is to protect an existing right from unwarranted interference by the State. The family in the UK are clearly within the category of those entitled to rely upon the protection provided by ECHR:

'ARTICLE 1

Obligation to respect Human Rights

1. The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.'

35. The private life of those falling within Article 1 will not be interfered with. The family life within the UK based family will not change. The indirect contact and visits can continue to Iran but the family life that exists between the appellant and her sponsor will be prevented from developing further. On the evidence, however, it has not been shown the decision of the First-tier Tribunal Judge to dismiss the appeal on this point, i.e. finding the decision is proportionate, is infected by material legal error. The appeal fails on this point.
36. As an aside and no more, at the hearing there was discussion in relation to the provision of the Immigration Rules permitting a person to seek entry for the purposes of medical treatment. Whilst this is not a route to settlement, it may cover an application for private surgery to replace the appellant's knees and pre-operative counselling or work to ensure she is suitable for surgery. The sponsor thanks an ECO for granting three entry clearances to the appellant in the past who must, therefore, have a good immigration history.
37. Persons can enter the UK as a visitor for medical treatment - an individual may receive private medical treatment provided they meet the additional eligibility requirements at V 4.14 - V 4.16:

Additional eligibility requirements for visitors coming to the UK to receive private medical treatment

V 4.14 If the applicant is suffering from a communicable disease, they must have satisfied the medical inspector that they are not a danger to public health.

V 4.15 The applicant must have arranged their private medical treatment before they travel to the UK, and must provide a letter from their doctor or consultant detailing:

- (a) the medical condition requiring consultation or treatment; and

- (b) the estimated costs and likely duration of any treatment which must be of a finite duration; and
- (c) where the consultation or treatment will take place.

V 4.16 If the applicant is applying for an 11 month visit visa for the purposes of private medical treatment they must also:

- (a) provide evidence from their medical practitioner in the UK that the proposed treatment is likely to exceed 6 months but not more than 11 months; and
- (b) if required under paragraph A39 and Appendix T Part 1 of these Rules, provide a valid medical certificate issued by a medical practitioner listed in Appendix T Part 2 of these Rules confirming that they have undergone screening for active pulmonary tuberculosis and that this tuberculosis is not present in the applicant.

38. The option of enabling the appellant to enter UK for knee replacement surgery is attractive as this will have effect of resolving her mobility issues and at the same time assisting with PTSD. The appellant will have to persuade an ECO that after any surgery she will return to Iran as she has in the past.

Decision

39. There is no material error of law in the First-tier Tribunal Judge’s decision. The determination shall stand.

Anonymity.

40. The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005.

I make no such order pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Signed.....
Upper Tribunal Judge Hanson

Dated the 22 February 2016