Tribunals Service
Asylum and Immigration Tribunal

Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/08453/2015**

THE IMMIGRATION ACTS

Heard at Field House	**Decision and Reasons Promulgated**
On 6th November 2017	**On 8th November 2017**

Before

UPPER TRIBUNAL JUDGE COKER

Between

KADIJATU JALLOH
(NO ANONYMITY DIRECTION MADE)

Appellant

And

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Ms S Sharma, instructed by Portway solicitors
For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a citizen of Sierra Leone, sought and was refused entry clearance on 21st September 2015 as an adult dependant relative of her daughter who is a British Citizen living in the UK with her husband and daughter. Her human rights (Article 8) appeal was dismissed by the First-tier Tribunal in a decision promulgated on 26th May 2017.

2. Permission to appeal was sought, in essence, on the grounds that inadequate consideration had been given to the evidence relied upon by the appellant. The grounds set out 6 claimed examples of that lack of consideration. It is submitted in the grounds that had adequate consideration been given then the refusal of entry clearance would be a breach of Article 8 and furthermore that the appellant met the Immigration Rules. Permission to appeal appears to have been granted, essentially, on

the basis that it was arguable the judge should have considered the evidence in the broader context of Article 8 "outside the Rules".

3. The application was refused on the basis the appellant did not meet the requirements of Appendix FM paragraph EC-DR.1.1(d) (relationship) and E-ECDR.3.1 (financial requirements). The ECO decision refers to the evidence before him: a letter from Dr Willoughby Memorial Clinic that it would be beneficial for the appellant to receive support from her daughter. The ECO states that the appellant has not provided any documents to show that the other daughter was living in Senegal or why the required level of support cannot be arranged by family members; has not provided any documents to demonstrate that she had been supported financially by her UK based daughter although had provided evidence that her UK daughter was employed in the UK; had produced no documents to establish why the required level of support cannot be arranged by the daughter who lives in Senegal. The ECO refused the application.

4. The grounds of appeal to the First-tier Tribunal, the hearing of which took place on 16th May 2017, take issue with the ECO decision that no evidence of financial support had been produced. Copies of remittance slips were in the respondent's bundle. There was also medical evidence that the appellant had suffered a heart attack and been found by her carer, Ayesha. The First-tier Tribunal Judge found that the appellant had been supported financially by her UK based daughter and although no specific finding is made, he sets out and appears to reach a decision predicated on the basis that the appellant is in daily contact with her UK based daughter and that she receives monthly medical attention.

5. An updating medical report and an updating letter from Ayesha was before the First-tier Tribunal judge. These clearly appertain to the decision the subject of the appeal, given the length of time that has elapsed before the hearing took place. The updated medical report is described by the First-tier Tribunal judge as being essentially in the same words as the earlier report: that she has continuing medication needs and that she would "be able to maintain her health and social care needs with the assistance of her daughter if she were to move to the UK". The judge refers to the evidence from Ayesha that in 2015 she said she could not continue to provide support but did so and that there is also another carer, Fudia, who the UK based daughter is not happy that she is providing the care she is supposed to.

6. The judge acknowledges that the appellant is illiterate and that she sometimes declines the care and assistance provided by the carer. The judge addresses the requirements of the Immigration Rules and makes a clear finding that he is not satisfied, on the evidence before him that the appellant cannot continue to receive the care she has been receiving in Sierra Leone. He makes a finding that although she has declined support she has managed to maintain her health and social care needs in Sierra Leone and that the appellant cannot meet the requirements of the Immigration Rules which state that she must, as a result of age, illness or disability, require long-term personal care to perform every-day tasks.

7. Although the grounds upon which permission to appeal to the First-tier Tribunal submit that the appellant meets the immigration rules on the basis of the evidence, that is simply not the case. The evidence before the judge did not and could not have led to a conclusion that the appellant required (or at the date of hearing requires) long term personal care. The more recent evidence before the First-tier Tribunal judge refers to the offers of assistance from friends and community and to continuing assistance from Ayesha. The appellant clearly, and understandably, wishes to be with her UK daughter but the Immigration Rules require more than such a desire, however trenchantly expressed.

8. The grounds submit that a different view of the evidence should have been taken. But the conclusions reached by the First-tier Tribunal judge on the evidence before him were plainly and clearly open to him. There is no error of law by the First-tier Tribunal judge that the appellant does not meet the requirements of the Immigration Rules.

9. The First-tier Tribunal judge was referred to *Britcits* [2016] EWHC 956 (Admin) which was under appeal to the Court of Appeal. In fact, the Court of Appeal judgment came out on 24th May 2017 (*Britcits* [2017] EWCA Civ 368)[1]. I was not specifically referred to that judgment by Ms Sharma. The tenor of her submissions was that the First-tier Tribunal judge failed to take proper cognisance of the evidence that the care previously available could not continue, the cultural aspect that the appellant should be looked after by her daughter and that the appellant now requires intimate personal care, which was not previously the case. The major difficulty with those submissions is that there was no evidence to that effect before the First-tier Tribunal judge. The evidence before the judge does not support that submission. The Appellant's UK based daughter refers to the cultural traditions and her obligations to look after her mother but there was no explanation why the appellant's other daughter could not put some such arrangement in place save that there was no contact and she was in Senegal. There was no explanation why she could not assist or why there was no contact. There was no explanation how, if there was no contact, it was known she was in Senegal.

10. The First-tier Tribunal judge does not consider Article 8 with any particular clarity and appears to take the view that because the appellant in *Britcits* lost then the appellant must lose. That is an error of law.

11. The judge should have considered whether there was family life such as to engage Article 8 and should have considered the proportionality of refusing

[1] 1. Britcits was a judicial review seeking, *inter alia*, a declaration that the Immigration Rules introduced in July 2012 in so far as adult dependants were concerned, were incompatible with Article 8 and as such fall to be either quashed or a declaration made as to their incompatibility. In giving the lead judgment, Sir Terence Etherton MR refused the order sought and rejected " the appellant's submission that there is family life which engages Article 8 in every case where a UK sponsor wishes to bring their elderly parent to the UK to look after them" [74].....In particular, rejection on the basis of the availability of adequate care in the ADR's home country turns upon whether the care which is available is reasonable for the ADR to receive and of the level required for that applicant. Contrary to the submission of the appellant, those considerations are capable, with appropriate evidence, of embracing the psychological and emotional needs of elderly parents[76]..... the balance depends on the facts of any particular case – the particular strength of the family bond and all other matters in favour of the particular applicant, on the one hand, and the public interest in achieving the policy and objectives of the new ADR Rules, on the other hand: see the observation of Baroness Hale and Lord Carnwath in *MM (Lebanon)* at [57] [78].

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entry clearance rather than adopting another decision with a different factual matrix. But taken at its highest that there is family life between the appellant and her UK daughter such as to engage Article 8, it cannot be concluded on the basis of the evidence before the First-tier Tribunal that the refusal of entry clearance was disproportionate. The appellant does not, on the evidence require personal, intimate and long-term day to day care that is not available to her in Sierra Leone. At most there is a strong desire between mother and daughter to be united in the UK but the desire to be with her daughter is simply insufficient to counter the strong public interest given the factual matrix this appellant presents.

12. In the absence of some other factor it cannot be concluded that the refusal of entry clearance is a disproportionate interference in the right to respect for family life.

13. There is no material error of law in the decision of the First-tier Tribunal.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision

Date 7th November 2017

Upper Tribunal Judge Coker