Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: IA/20234/2015**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 21 June 2017	**On 4 July 2017**

EX -TEMPORE JUDGEMENT

Before

UPPER TRIBUNAL JUDGE McWILLIAM

Between

MS DESANKA BEGOVIC
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Komusanac, Igor & Co Solicitors
For the Respondent: Mr T Melvin, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Serbia and her date of birth is 11 July 1950. She came to the UK as a visitor on 16 November 2013. Her leave expired on 15 May 2014. On 11 February 2015 she applied for leave to remain on the basis of her medical condition and her application was refused, by the Secretary of State, in a decision of 18 May 2015. The Appellant appealed against that decision and her appeal was dismissed by Judge of the First-tier Tribunal S Iqbal in a decision which was promulgated on 3 November 2016 following a hearing at Hatton Cross on 11 August 2016. Permission

was granted to the Appellant by Upper Tribunal Judge Martin on 15 May 2017.

2. At the hearing before the First-tier Tribunal both parties were represented. The judge set out the reasons why the Respondent refused the application. This decision engaged with paragraph 276ADE(1) of the Rules and the Immigration Rules relating to adult dependent relatives. The judge heard evidence from the Appellant and the Appellant's daughter. The Appellant was, at the date of the hearing, aged 66 and had been living with her only biological daughter and grandson in the UK since she arrived had arrived here as a visitor on 16 November 2016. She has been visiting the UK since 2001.

3. The judge made the following findings:

> "18. I have considered all of the documentary evidence before me submitted by the Appellant and the Respondent. It is clear that the Appellant cannot meet either Appendix FM or paragraph 276 ADE of the rules.
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> 21. The obvious issue in this case is the fact that the Appellant is now 66 years old and has been living with her only biological daughter in the United Kingdom since her arrival on the 16th November 2013. She has been visiting the UK since 2001 and has no close family in Serbia, save for two sisters who live in different cities, about 100km away from her and were about 80 years old.
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> 27. The evidence, I have heard from the Appellant in relation to her circumstances is that she has been visiting her daughter in the United Kingdom since 2001. She came at least once a year. She was a paediatric nurse until her retirement in 1999 when she was classified as disabled and given a disability pension following early retirement due to a worsening heart and thyroid condition diagnosed in 1994/1995. She states that her condition has made her less capable of doing the things she could do on her own without depending on neighbours or assistance from friends. She states that she began to feel very weak during her last visit to the United Kingdom and sought medical treatment privately and had remained on medication for her condition. She stated she was now having bad dizzy spells with fatigue, lack of air in her chest and she would feel the pressure rising and she would have bad headaches.
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> 28. She was asked what assistance she required and she said she could not get up on certain days as she had problems with her spine, she had problems washing her hair and she could not look after herself or dress herself. She confirmed her daughter helped her. She further confirmed she owned a flat in Belgrade in Serbia. She relied on help from neighbours. Insofar as her pension was concerned she stated that she had given authority

to a neighbour to collect her pension on her behalf and she would give it to her on return. She had known her neighbour since 1992, when she started to live there. Her last attack before she came to the United Kingdom was in the winter and she had had therapy for blood pressure, heart condition and hypertension. She confirmed neighbour helped her and she stated that other neighbours helped her all the time. She confirmed that her daughter had last come to see her in approximately 2012/2013 when she had submitted her visa application form. She stated when she did not have any attacks she was able to deal with herself and do things without any difficulty. She stated she had accessed medical help in the UK and her daughter had paid privately for this. Her daughter's husband was also working, however, he worked in the evenings and therefore looked after her grandson during the day as she was unable to care for him by herself given her own medical conditions.

29. The Appellant's daughter also gave evidence that there had been a change in her mother's condition since 2013, she was weaker, she had attacks on a daily basis and problems with her heart and blood pressure where she could not see or could not cook. Her daughter also stated that the neighbour who usually helped her was really sick and she was the only one who she could rely on when her mother suffered with an attack. She said she often helped her in the toilet and to brush her teeth but she had never researched whether any help was available in Serbia itself.

30. I find having considered the totality of the evidence that I have not got any medical evidence in relation to the Appellant's attacks, their seriousness or the level of occurrence of them. In addition the evidence of the Appellant and her daughter with reference to the help of those around her in Serbia has not been consistent. The Appellant's daughter states the neighbour who helped previously was very ill and the Appellant was unable to obtain assistance however, the Appellant in her evidence was quite clear that her neighbour continued to collect her pension for her as she had given her the authority. She stated her neighbours were very helpful and reliable especially in relation to the last attack she had before coming to the United Kingdom.

31. Her daughter had previously visited her at the time she had had her baby who was three months old and was now back at work. It is understandable that the Appellant and her daughter wish to be together, especially during this time as the Appellant is getting older, however I find it is unfortunate that there is insufficient evidence to show the level of the Appellant's incapacity, which requires her daughter to assist her.

32. I have also given consideration to the statutory matters under Section 117 of the Immigration Act 2014 and I note that given, the Appellant would be exempt from the English language test,

given she is 66 years of age and appears to be financially supported by her daughter and son-in-law such that she would be adequately maintained without recourse to public funds. However, in considering the totality of the circumstances, given that there is a lack of any supporting evidence in relation to the assertions made about the Appellant's health, I find on balance that there is insufficient evidence to demonstrate that it would not be disproportionate to remove the Appellant or in the alternative for her to return back and obtain the relevant evidence to demonstrate that she was an adult dependent relative under the Immigration Rules as set out in detail above.

33. I have every sympathy with the circumstances of the Appellant however, as I have set above it is open for the Appellant to make an appropriate application from abroad or indeed a fresh application with evidence to support her circumstances in the United Kingdom."

4. The grounds of appeal raise a number of issues, but the ground pursued by Mr Komusanac is that the judge erred because she did not make a finding in respect of paragraph 276ADE(1)(vi). It is on this basis that permission was granted by Upper Tribunal Judge Martin. Mr Komusanac did not argue before me that the judge made insufficient findings of fact or that the findings of fact were not open to the judge. The argument, as advanced by Mr Komusanac, was that the judge "did not consider the cumulative effect of the findings" and that proportionality involved an assessment of the public interest, which is not material when considering very significant obstacles.

5. I conclude that the judge did not make a discrete finding in respect of very significant obstacles. She briefly dealt with paragraph 276ADE at paragraph 18, stating that it was clear that the Appellant she could not meet the requirements of the Rules, and she set out the previous version of paragraph 276ADE at paragraph 14 of the decision. This refers to ties as opposed to very significant obstacles. This amounts to an error of law, but one that is not material.

6. It is of significance that the Appellant's case was not advanced on the basis of very significant obstacles. The test under 276ADE is different to a proportionality assessment. There is no weighing of the public interest. However, the judge made comprehensive findings in respect of the Appellant and her circumstances. I was not referred to any matter on which the judge failed to make findings and ultimately the grounds, as argued by Mr Komusanac, do not challenge the findings made. In assessing very significant obstacles it is incumbent on a judge to conduct a broad evaluative judgment as to whether an individual would be able to operate on a day-to-day basis. Considering the lawful and sustainable findings made by the judge it is unarguable that she would have reached a different conclusion, had she made a discrete assessment under paragraph 276ADE(1)(vi). It is unarguable that the evidence before the judge established very significant obstacles.

7. The Appellant lived in Serbia until 2013. The judge accepted that she receives a disability pension in Serbia. She has her own flat there and she has no close relatives, save two sisters who are aged 80 and live about 100 kilometres from the Appellant. She is aged 66 and her only biological daughter and grandson reside in the UK.

8. The judge made comprehensive findings in relation to the Appellant's medical condition. The medical evidence before the judge was a letter from Dr Pattapola of 20 March 2015. Dr Pattapola stated that he recently saw the Appellant, who had requested that information was to be forwarded.

9. The doctor set out that the Appellant has been suffering from moderate to severe hypertension, intermittent palpitations, occasional atypical chest pain, recurrent headaches and cervical spondylosis with radiculopathy. He set out her medication and indicates that the Appellant is stable on such medication. The doctor concluded that the Appellant's condition is satisfactory apart from that she feels anxious and has intermittent headaches and palpitations. The doctor reported that the Appellant has stiffness in her neck muscles and secondary spondylosis, but that there was no evidence of wasting of distal muscles. The doctor concluded that her " vital signs are within normal range".

10. Having properly considered this evidence, the judge concluded that there was no medical evidence of the attacks about which the Appellant's daughter gave evidence, their seriousness or level of occurrence. This finding is not challenged and was open to the judge on the evidence before him. The judge was not satisfied that the evidence from the Appellant and her daughter, with reference to the help given by those in Serbia, was consistent. The Appellant's evidence was that her neighbours are helpful and reliable and that a neighbour helped her when she had suffered an attack.

11. The judge concluded that the evidence was insufficient to show the Appellant's level of incapacity. This is a finding that the judge was entitled to reach on the evidence. Mr Komusanac submitted that should the matter be reheard he would intend to present further evidence (there was no further evidence before me and fairness was not an issue), but that does not assist me in determining whether the judge materially erred. It was unclear why such evidence was not before the First-tier Tribunal.

12. The judge considered all the evidence which could potentially support a case advanced on the basis of very significant obstacles to integration and made lawful and sustainable findings. Considered cumulatively the evidence was not capable of establishing very significant obstacles in the context of paragraph 276ADE(1)(vi).

13. There is no challenge to the proportionality assessment. The judge accepted family life between the Appellant and her daughter and grandson and that the decision would interfere with this; however,

concluded that the interference would be proportionate. Mr Komusanac did not pursue the ground relating to Chikwamba [2008] UKHL 40 and this was sensible, bearing in mind that the judge concluded that the Appellant would not meet the requirements of the Rules relating to adult dependent relatives, contrary to the assertion in the grounds. The evidence and the findings made do not support the contention in the grounds that the Appellant would satisfy the substantive requirements of the Immigration Rules relating to adult dependent relatives.

14. Mr Komusanac did not pursue the ground that the judge did not consider the evidence of Dr Pattapola of 20 March 2015 and this, in my view, was sensible. The ground is wholly unarguable.

15. The argument pursued and the only ground relied on was the failure to determine the appeal under paragraph 276ADE(1)(vi), but for the above reasons I conclude that there is no material error of law. The decision of the First-tier Tribunal to dismiss the appeal is maintained.

No anonymity direction is made.

Signed Joanna McWilliam Date 3 July 2017

Upper Tribunal Judge McWilliam