Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: HU/04994/2017
HU/04992/2017

THE IMMIGRATION ACTS

Heard at : Field House
On : 24 April 2018

Decision & Reasons Promulgated
On : 2 May 2018

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

SAMIA JARAD
JEHAN ALYOUSEF

Appellants

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Moran of Alex Moran Immigration & Asylum
For the Respondent: Mr L Tarlow, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellants are citizens of Syria born on 1 November 1950 and 15 February 1977 respectively and are mother and daughter. They have been given permission to appeal against the decision of First-tier Tribunal Judge McGrade dismissing their appeals against the respondent's decision to refuse their applications for entry clearance.

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2. The appellants applied for entry clearance to settle in the UK as the adult dependant relatives of the sponsor, the first appellant's son and the second appellant's brother, Bilal Mohamed Yossef, a naturalised British citizen. It was stated in the appellants' application that they were refugees from the civil war in Syria and had been living in Turkey since October 2012. The first appellant suffered from diabetes, hypertension and degenerative back problems and had been a widow since the death of her husband in June 2014. She lived with her daughter, the second appellant, in southern Turkey. The second appellant was also suffering from problems with her back. The sponsor was the first appellant's eldest of five sons living in the UK. He worked as a chef, was married with one child and lived with his wife and child and his brother. All five sons supported the appellants financially. The sponsor wanted to bring the appellants to the UK due to the deterioration in their health and increasing inability to care for themselves. It was stated in the appellants' application that they had no formal right of residence in Turkey and only enjoyed limited rights in the country. They had no access to the Turkish social security system and had no social or family support network. They did not have access to the type of long-term medical support they required and they could not find local care due to language problems.

3. The appellants' applications were refused 15 February 2017 under the eligibility provisions of Appendix FM of the immigration rules, specifically paragraph EC-DR.1.1(d) with reference to E-ECDR.2.4 and E-ECDR.2.5 on the basis that the respondent was not satisfied, on the evidence produced by the appellants, that they required long-term personal care to perform everyday tasks or that they were unable to obtain the required level of care where they were currently living with the financial assistance of the sponsor. The respondent considered that the decision did not breach Article 8 of the ECHR.

4. The appellants appealed against the decisions and their appeals were heard by First-tier Tribunal Judge McGrade on 14 September 2017. The judge heard from the sponsor, Bilal Mohamed Yossef, and his brother Jalal Mohamed Al Yousef. Judge McGrade accepted that the respondent's decisions engaged Article 8 on family and private life grounds and went on to consider proportionality. It was conceded on behalf of the appellants that they could not meet the requirements of the immigration rules in Appendix FM-SE in relation to specified evidence, although it was asserted on behalf of the appellants that they could meet the substantive requirements of the rules. The judge accepted that there were difficulties faced by the appellants on account of their medical problems but was not satisfied that they were unable to obtain the required level of care in Turkey. He concluded that the refusal of entry clearance was not disproportionate.

5. Permission to appeal to the Upper Tribunal was sought by the appellants on the grounds that the judge had failed to consider whether the care required by the appellants could reasonably be provided, in the terms set out in BRITCITS v The Secretary of State for the Home Department [2017] EWCA Civ 368, that the judge had failed to consider the appellants' emotional and psychological needs as required by Britcits v The Secretary of State for the Home Department [2017] EWCA Civ 368; and that the judge had failed to take

account of various relevant factors which could constitute compelling circumstances, in assessing proportionality.

6. Permission was initially refused in the First-tier Tribunal but was granted, upon renewal, by Upper Tribunal Judge Blum, on 4 January 2018, in the following terms:

> “The medical evidence does not appear to suggest that the appellants have any emotional or psychological requirements, and there has been no verification of any such requirements by medical experts. It is nevertheless arguable that the FtJ failed to take account of a number of relevant considerations, identified in paragraphs 20 and 23 of the grounds, in undertaking the proportionality assessment, and that the FtJ failed to approach the terms of the ADR rules in light of the CA’s assessment in Britcits [2017] EWCA Civ 368, particularly at [59].”

7. At the hearing Mr Moran relied and expanded upon the grounds of appeal. Mr Tarlow submitted that there was no material error of law in the judge’s decision.

The Legal Framework

8. The relevant immigration rules relating to adult dependant relatives are set out at [5] of the judgment in Britcits, as follows:

> “5. As from 9 July 2012 the right of an ADR to apply for indefinite leave to enter is now contained in section E-ECDR 2.1 to 2.5 of Appendix FM to the new rules. They provide as follows, so far as relevant:
>
> "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.2.3. 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."

9. The relevant Home Office guidance in the Immigration Directorate Instructions is set out at [6] of the judgment in Britcits:

“6. Immigration Directorate Instructions ("the Guidance") contain the following relevant guidance to the new ADR Rules at 2.2.2. with effect from 13 December 2012:

"**2.2.2 Unable to receive the required level of care in the country where they are living**

The ECO [Entry Clearance Officer] needs to establish that the applicant has no access to the required level of care in the country where they are living, even with the practical and financial help of the sponsor in the UK. This could be because it is not available and there is no person in that country who can reasonably provide it, or because it is not affordable. The evidence required to establish this is set out below. If the required level of care is available or affordable, the application should be refused.

2.2.3 No person in the country who can reasonably provide care

The ECO should consider whether there is anyone in the country where the applicant is living who can reasonably provide the required level of care.

This can be a close family member:

Son

Daughter

Brother

Sister

Parent

Grandchild

Grandparent

or another person who can provide care, e.g. a home-help, housekeeper, nurse, carer, or care or nursing home.

If an applicant has more than one close relative in the country where they are living, those relatives may be able to pool resources to provide the required care.

The ECO should bear in mind any relevant cultural factors, such as in countries where women are unlikely to be able to provide such support."

Discussion

10. It is argued on behalf of the appellants that the judge failed to apply the relevant case law to interpret the immigration rules in determining the care available to them in Turkey and reliance is placed on [59] in Britcits in that regard, which states as follows:

> "Second, as is apparent from the Rules and the Guidance, the focus is on whether the care required by the ADR applicant can be "reasonably" provided and to "the required level" in their home country. As Mr Sheldon confirmed in his oral submissions, the provision of care in the home country must be reasonable both from the perspective of the provider and the perspective of the applicant, and the standard of such care must be what is required for that particular applicant. It is possible that insufficient attention has been paid in the past to these considerations, which focus on what care is both necessary and reasonable for the applicant to receive in their home country. Those considerations include issues as to the accessibility and geographical location of the provision of care and the standard of care. They are capable of embracing emotional and psychological requirements verified by expert medical evidence. What is reasonable is, of course, to be objectively assessed."

11. Emphasis is placed by Mr Moran on the statement that "*the provision of care in the home country must be reasonable both from the perspective of the provider and the perspective of the applicant*". It is asserted that the judge erred in law by failing to apply that principle. However, having carefully considered the judge's decision and the evidence which was before him I find myself in agreement with Mr Tarlow, that there was no material error of law and that the judge had considered all relevant matters. It would perhaps have been helpful if the judge had specifically referred to Britcits and to the principle of reasonableness in the context of [59] but it seems to me that nothing material arises from this, for two reasons.

12. Firstly, there is nothing in [59] of Britcits which sets out a separate test to be applied in ADR cases, which the judge failed to apply, but rather [59] is simply an observation as to the requirements of the relevant rules and guidance and the focus therein. It is clear that Judge McGrade had full regard to the provisions of the relevant rules and I do not agree with Mr Moran's submission that the fact that he did not specifically and expressly refer to the word "reasonable" demonstrates a failure to consider all the requirements of the rules or demonstrates a misinterpretation of the rules.

13. Secondly, this was not a matter of the judge failing to consider whether the care required by the appellants was reasonably available and accessible, but the judge's finding was that there was no evidence of any efforts having been made to find appropriate care in the first place, other than by word of mouth or neighbours. The only evidence before the judge, which he plainly took into account, was the sponsor's evidence in his statement of three previous unsuccessful care arrangements, but the judge found at [24] that there was nothing to show that the family had made any wider enquiries about recruiting carers or finding residential care. Accordingly, given the absence of any evidence to show that efforts had been made to find such care, the judge

was unable to go on and assess whether it was reasonably accessible and adequate.

14. It is also relevant to note that the judge found that the evidence before him indicated that the second appellant's heath problems were not long-term but that she suffered from a condition which required rest and from which she was then likely to recover. Accordingly the situation before him was that the second appellant would be able to resume her care of her mother, so that the care currently required was simply to assist the second appellant in looking after her mother whilst she (the second appellant) was incapacitated.

15. Accordingly I find nothing in the judge's decision to suggest that he failed to consider the approach set out at [59] in Britcits or that his approach to the evidence was inconsistent with that set out in Britcits. Neither do I find that there was any error on the part of the judge in failing to consider the appellants' emotional and psychological needs and I am entirely in agreement with Upper Tribunal Judge Blum's observation, in his grant of permission, that there was no evidence to suggest that they had any particular emotional or psychological requirements. The judge plainly had regard to the difficulties they faced in terms of having left their home country and finding themselves as refugees in another country, their medical problems and their separation from their family and their desire to join their family in the UK. There was, however, no evidence before the judge to suggest that their emotional and psychological difficulties extended beyond that.

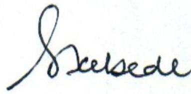
16. With regard to the second and third grounds, I do not find that the judge failed to conduct a proper proportionality assessment or failed to take into account relevant matters. Whilst it is the case that the judge did not expressly refer to the test of "compelling circumstances" justifying a grant of entry clearance outside the immigration rules, it is plain from his findings that he gave full consideration to the appellants' circumstances and to all relevant matters and that he did not find their circumstances to be sufficiently compelling to render the refusal of entry clearance disproportionate. It is not the case, as the grounds assert at [19], that the judge only considered the factors set out at [19(a) to (c)]. On the contrary, [27] of the judge's decision plainly shows that he considered the further factors raised by the appellants. It was not necessary for the judge to refer to each and every factor set out at [20] and [23] of the grounds. Clearly he had regard to the appellant's appeal bundle and to the background information set out therein and, whilst his decision may well have benefitted from a more detailed analysis than that set out [27], it is plain that he gave full consideration to the appellants' situation and to the difficulties that they faced. The evidence before the judge was of a general nature and the judge noted that there was no evidence of specific problems faced by the appellants other than those which he had considered. Indeed the evidence before him was that both appellants were living in privately rented accommodation and had access to medical treatment including the medication and procedures referred to in the medical reports at pages 258 to 268. The judge plainly had sympathy for the appellants, as he expressed at [28], but was entitled to conclude that they had failed to meet the burden of proof which lay upon them to meet the requirements of the

immigration rules and had failed to show that the respondent's decision was disproportionate.

17. Accordingly the judge was fully entitled to dismiss the appeal on the basis that he did and I find no errors of law in his decision. I uphold the decision.

DECISION

18. The making of the decision of the First-tier Tribunal did not involve an error on a point of law. I do not set aside the decision. The decision to dismiss the appeal stands.

Signed 

Upper Tribunal Judge Kebede Dated: 26 April 2018