



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: IA/16067/2015

THE IMMIGRATION ACTS

Heard at Centre City Tower, Birmingham
On 15th August 2018

Decision & Reasons Promulgated
On 27th September 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MRS SAKINA BI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Ali (LR)
For the Respondent: Mrs H Aboni (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Andrew, promulgated on 25th April 2017, following a hearing at Birmingham Sheldon Court on 20th April 2017. In the determination, the judge dismissed the appeal of the Appellant, whereupon the Appellant subsequently applied for and was granted, permission to appeal to the Upper Tribunal, and thus the matter arises before me.

The Appellant

2. The Appellant is a female, a citizen of Pakistan, who was born on 1st January 1937. She appealed against the decision of the Respondent dated 21st March 2015, refusing her application for indefinite leave to remain in the UK as a dependant of her son, and to remove her from the United Kingdom.

The Judge's Findings

3. The judge was not satisfied that the Appellant was dependent upon her son as claimed. The Appellant herself did not attend the hearing. There was a medical report which indicated (at paragraph 12.13) that the Appellant would not be capable of giving evidence at the hearing. The evidence at the hearing was, accordingly, given by the Appellant's daughter-in-law, Rukhsana Kosar.
4. The reasons why the judge was not satisfied that the Appellant could make out her case was that she was not able to accept that the Appellant's UK son, Mr Ilyas Muhammed, who was sponsoring her, was the Appellant's only son. The judge came to this conclusion having seen the VAF completed by the Appellant when she applied for a visit visa to allow her to enter the United Kingdom (at paragraph 5).
5. In that application, the Appellant states at question 16 that she has a son "Munir Ahmad", and that her application showed that she was supported by her sons, to such an extent that she actually attached documentation relating to her son "Munir Ahmad", who she said supported her. Mrs Kosar, the Appellant's daughter-in-law, gave evidence to say that "Munir Ahmad" was not her son, but her nephew, but the judge did not accept that.
6. In fact, the judge found Mrs Kosar to be lacking in credibility. Moreover, the judge was not satisfied that the Appellant was dependent upon Mr Ilyas Muhammed for her maintenance because this was contrary to the claims that she had already made in the VAF, and she had seen no evidence of funds being transferred by Mr Muhammed to the Appellant (paragraph 8). This was an Appellant who had arrived in the UK on 8th July 2014 on a visit visa which was valid until 20th January 2015, and she had then applied for indefinite leave to remain on 19th January 2015 (paragraph 9).
7. The appeal was dismissed.

Grounds of Application

8. The grounds of application state that the judge was requested at the hearing, at the outset, by the Appellant's representative, to allow a medical letter dated 15th March 2017 from an NHS hospital treating the Appellant which sets out her diagnosis and other matters including the finding of the MRI and CT scan, and her care needs on page 2 of the letter.
9. The judge, the grounds alleged, refused to allow this letter, saying that it added nothing, because the Home Office Presenting Officer had accepted the diagnosis of the Appellant's dementia findings in the psychiatric medical report. However, the judge had then gone on to refer to the scan at paragraphs 10 and 13 of the decision and concluded that the Appellant failed to keep the CT scan appointments.
10. The judge also observes that the scans are actually important because they can reveal the extent of the Appellant's dementia, but such evidence was not before the judge, and therefore the judge could not be satisfied as to the extent of the Appellant's dementia.

11. On 8th November 2017, permission to appeal was granted by the Tribunal on the basis that the failure to allow the letter to be included in the Appellant's evidence created an incomplete picture of the medical records from the Appellant's GP and affected the overall assessment of the judge, to such an extent, that there was a procedural unfairness to the Appellant.

Submissions

12. At the hearing before me on 15th August 2018, Mr Ali, appearing on behalf of the Appellant, submitted that, in circumstances where the judge had said that the medical letter dated 15th March 2017 did not add anything further to the existing evidence before the Tribunal, whereas it plainly did, the failure to have it included in the evidence on the day of the hearing led to a procedural unfairness, to the extent that the judge then did go on to refer to the CT scan at paragraphs 10 and 11 of the determination, with the conclusion being drawn that the judge could not be satisfied about "the extent of the Appellant's dementia" (see paragraph 13).
13. For her part, Mrs Aboni submitted that the facts that were now being relied upon were not the facts before the judge on the day of the hearing. What the Appellant had done on that day was to have adduced late evidence in the form of, what was referred to by the judge as a "comprehensive report", relating to the Appellant's mental health, by a Dr Khaleel. The judge makes it clear that "this was not served until very shortly before the hearing" and that the Respondent's representative indeed "objected to its inclusion in the documentation before me because of its late service".
14. Nevertheless, the judge went on to say, that even though there had been an adjournment on 5th December 2016 to allow for the provision of a medical report, and there had been "no compliance with the directions of 6th December 2016", nevertheless, the judge "took the view that the report would throw light onto the Appellant's current mental health and that the report should be considered" (paragraph 11).
15. There was, submitted Mrs Aboni, nothing recorded by the judge in terms of an attempt to adduce the letter of 15th March 2017 for Dr Jagnath Abeyaganaratne, and nothing in the Presenting Officer's notes of the date of the hearing, which show that there was a letter of 15th March 2017, as now claimed.
16. In circumstances, submitted Mrs Aboni, where the judge, notwithstanding the protestations of the Presenting Officer that the evidence produced now was late evidence such that it should not be accepted, Judge Andrew did proceed to accept the evidence that was late because this "would throw light onto the Appellant's current mental health", it was simply not conceivable that a letter of 15th March 2017 had actually been presented for inclusion before the judge.
17. In reply, Mr Ali submitted that there was indeed a letter of 15th March 2017. He could say this because first, he had checked personally with Counsel on the day of the hearing, Mr Sarwar, who had confirmed to him that such a letter had been presented before the Tribunal for inclusion, but was rejected. Second, there was a witness statement dated 9th May 2017, after the hearing from Mrs Rukhsana Kosar, who states that, "the Immigration Judge was requested at the beginning of the hearing by my mother-in-law's representatives to allow a medical letter dated 15th March 2017 from

the NHS" (paragraph 2), and that "after looking at and considering the letter, the judge refused to allow it because the judge said the letter added nothing more ..." (paragraph 3).

No Error of Law

18. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows.
19. First, this is a case where it is common ground that late evidence was adduced. That late evidence was objected to by the Presenting Officer. It was not in compliance with the directions given on 6th December 2016. The judge was entitled to reject that evidence when it was given so late. Instead, what the judge did was to say that, despite objections from the Presenting Officer, the evidence would be admitted. This is the evidence of a report from Dr Khaleel dated 14th April 2017.
20. Second, it is noteworthy that if the judge was to admit a later report of 14th April 2017, there was no reason why she would reject an earlier letter of 15th March 2017, which had been postdated, had it been adduced. The Presenting Officer's notes do not disclose that this was adduced. The judge herself, in what is a meticulous determination carefully compiled, refers to a letter of 15th March 2017. I should add that a reliance upon a witness statement from Mrs Rukhsana Kosar does not advance matters very much further given that the judge had expressly stated that, "I do not find this evidence of Mrs Kosar to be credible" (paragraph 14).
21. Third, even if one is wrong about such evidence being made available on the day of the hearing, but not accepted by the judge, any error that arises is not a material error.
22. There are two reasons for this. First, the judge refers to the CT scan (at paragraph 10) and makes it clear that the Appellant "has failed to keep this appointment" as confirmed by Dr Jagnath Abeyaganaratne (paragraph 10). No submission has been made that this particular finding is incorrect as a matter of fact.
23. Second, what reports the judge did look at were not persuasive. There is the report of Dr Khaleel, which the judge refers to as "the only comprehensive report I have before me" (paragraph 11). This, the judge finds to be a report upon which she is "unable to place a great deal of weight" because "the doctor did not, in fact, interview the Appellant because of a language barrier", and what transferred at the hearing was that "Mrs Kosar told me that it was she and her husband who had answered all the questions asked" (paragraph 12).
24. In this regard, therefore, if one looks at the report of Dr Jagnath Abeyaganaratne, dated 14th March 2017 (and not 15th March 2017) there is no evidence again whatsoever that the Appellant herself has been questioned and interviewed. What Dr Jagnath Abeyaganaratne states is that he "reviewed Mrs Bi at her home on 9th February 2017 aided with an interpreter", before going on to say that, "according to her family Mrs Bi's cognitive functions have further declined since I saw her last".

25. It is not, however, a matter for her family, but for the medical practitioner himself, to be satisfied as to the state of the Appellant's "cognitive functions", and the fact that reliance is placed upon family members means that the judge was likely to have taken the same view in relation to this report (assuming that it had been put before her on the day of the hearing which is not shown to have been the case).
26. Although it is the case that later in the report Dr Jagnath Abeyaganaratne does say that, "her MRI scan showed evidence of extensive chronic small vessel ischaemic changes throughout the periventricular matter" the doctor does end his report with the observation that,
- "This lady has significant care needs however her daughter-in-law reported she is able to cope with her mother's needs at the moment. She does not appear to have significant psychiatric needs. However I would like to review her in approximately four months' time."
27. This, then, was the report of 14th March 2017. What Judge Andrew had done was to have admitted a report which was dated a month thereafter, being dated 14th April 2017, and to which she had referred to as "the only comprehensive report I have before me", and for reasons that she had then given, namely, that Dr Khaleel did not interview the Appellant, Judge Andrew was then able to come to the conclusion that she did. Her reasons for coming to these conclusions are set out at paragraphs 13 and 14.
28. Importantly, the judge does make it clear that "the Respondent's representatives accepted that the Appellant is suffering from Alzheimer's dementia" (paragraph 15), although "the degree of the Appellant's illness" was not something that the judge could be clear about (paragraph 15). Thereafter, the judge concludes that the Appellant cannot succeed under paragraph 276ADE (paragraph 17) or under Article 8 (paragraphs 18 to 21).
29. There is nothing in the judge's eventual conclusions, namely, that "there is nothing before me to show the Appellant would be unable to access medical assistance in Pakistan" (paragraph 21) is unsustainable.
30. Equally, there is nothing to show that the judge was not entitled to conclude that it was not the case that, "on the evidence before me, that the Appellant would be unable to undertake the journey to Pakistan" (paragraph 23).

Notice of Decision

31. The decision of the First-tier Tribunal did not involve a material error of law. The determination shall stand.
32. No anonymity direction is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

24th September 2018