Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: UI-2022-000263
HU/52886/2021; IA/09011/2011

THE IMMIGRATION ACTS

Heard at Cardiff Civil Justice Centre	**Decision & Reasons Promulgated**
On 28 July 2022	**On 29 September 2022**

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

ROSY THOMAS

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr P Richardson instructed by Ideal Solicitors
For the Respondent: Ms S Rushforth, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction

1. The appellant is a citizen of India who was born on 5 May 1942. She is, therefore, 80 years old.

2. The appellant came to the United Kingdom on 29 February 2020 on a six month visit visa. On 29 July 2020, before her leave to enter expired, the appellant applied for further leave to remain under Art 8 of the ECHR outside the Immigration Rules.

3. On 10 March 2021, the Secretary of State refused the appellant further leave on that basis.

4. The appellant appealed to the First-tier Tribunal. In a decision dated 10 February 2022, Judge Povey dismissed the appellant's appeal. First, Judge Povey concluded that the appellant would not, on return to India, meet the requirements of the Adult Dependent Relative ("ADR") Rules in E-ECDR of Appendix FM. Secondly, Judge Povey found that the appellant did not succeed under para 276ADE(1)(vi) of the Immigration Rules on the basis that it was not established that there were "very significant obstacles" to her integration on return to India. Thirdly, the judge found that the appellant did not succeed under Art 8 outside the Rules because any interference with her private and family life was not disproportionate.

The Appeal to the Upper Tribunal

5. The appellant sought permission to appeal to the Upper Tribunal on two grounds. First, the judge erred in finding that the appellant could not meet the requirements of the ADR Rules on return to India. In finding that the appellant could obtain the reasonably required level of care in India to meet her need for long-term personal care to perform everyday tasks, the judge failed to take into account the appellant's emotional and psychological needs and the need for care from close family members given her deteriorating health, including dementia. Secondly, the judge erred in law by failing properly to take into account the impact upon the family life of the appellant and her sons and their families in the UK.

6. On 7 March 2022, the First-tier Tribunal (Judge Nightingale) granted the appellant permission to appeal on both grounds.

7. The appeal was listed for hearing at the Cardiff Civil Justice Centre on 28 July 2022. The appellant was represented by Mr P Richardson and the respondent by Ms S Rushforth. I heard oral submissions from both representatives.

The Relevant Legal Provisions

8. The ADR Rule in E-ECDR of Appendix FM, so far as relevant, provides as follows:

> "**Relationship requirements**
>
> 2.1. The applicant must be the –
>
> (a) parent aged 18 years or over;
>
> ... of a person ('the sponsor') who is in the UK.
>
> ....
>
> 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

…

2.4. The applicant ... must as a result of age, illness or disability require long-term personal care to perform everyday tasks.

2.5. The applicant ... 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. It is common ground that the appellant could not succeed under that rule in an in-country application for leave. The rule applies, so far as relevant to the appellant, only as an entry clearance rule which would require her to be in India. The relevance of the rule, therefore, is that the rule becomes relevant to the application of the Chikwamba (Chikwamba v SSHD [2008] UKHL 40) principle (see Mobeen v SSHD [2021] EWCA Civ 886).

10. The essential elements of the Rule are:

(1) the individual must require "long-term personal care to perform everyday tasks",

(2) that must be "as a result of age, illness or disability";

(3) the individual "must not be able to obtain the required level of care in their own country, even with practical and financial help of the sponsor" because *either*

(a) it is not available and there is no person in that country who can reasonably provide it, *or*

(b) it is not affordable.

11. In Britcits v SSHD [2017] EWCA Civ 368 ("Britcits"), the Court of Appeal recognised the policy underlying the ADR Rule at [58] as follows:

> "58. …, the policy intended to be implemented by the new ADR Rules, as appears from the evidence, the new ADR Rules themselves and the Guidance, and confirmed in the oral submissions of Mr Neil Sheldon, counsel for the SoS, is clear enough. It is twofold: firstly, to reduce the burden on the taxpayer for the provision of health and social care services to those ADRs whose needs can reasonably and adequately be met in their home country; and, secondly, to ensure that those ADRs whose needs can only be reasonably and adequately met in the UK are granted fully settled status and full access to the

> NHS and social care provided by local authorities. The latter is intended to avoid disparity between ADRs depending on their wealth and to avoid precariousness of status occasioned by changes in the financial circumstances of ADRs once settled here."

12. Then, at [59], the Court of Appeal offered some guidance on the phrase "required level of care" and that that level must be "reasonable" from both the viewpoint of the individual and also the provider:

> "59. …, 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."

13. Consequently, what is "reasonable" must take into account the particular circumstances of the individual requiring the care including their psychological and emotional needs. There may, therefore, be circumstances in which although care could be provided by a third party in the individual's home country, it would only be reasonable for care to be provided by a close family member. That could, for example, arise in relation to personal or intimate care that an individual requires where culturally, or otherwise, it would not be reasonable for that to be provided by a third party rather than a close family member.

14. In Ribeli v ECO, Pretoria [2018] EWCA Civ 611, Singh LJ commented, adopting Counsel's submission, that the ADR Rule imposes a "rigorous and demanding test".

15. Although I was not referred to it at the hearing, Appendix FM-SE at paras 33–37, sets out requirements for evidence needed to establish elements of the ADR Rule. At para 32, it is stated:

> "32. Evidence that, as a result of age, illness or disability, the applicant requires long-term personal care should take the form of:
>
> (a) Independent medical evidence that the applicant's physical or mental condition means that they cannot perform everyday tasks; and
>
> (b) This must be from a doctor or other health professional".

16. Consequently, in order to satisfy the requirement of the need for long-term personal care and that it results from "age, illness or disability",

independent evidence from a doctor or other health professional is required.

17. Further, at para 35 Appendix FM-SE requires independent evidence to establish that the required level of care is not available:

> "35. Independent evidence that the applicant is unable, even with the practical and financial help of the sponsor in the UK, to obtain the required level of care in the country where they are living should be from:
>
> (a) a central or local health authority;
>
> (b) a local authority; or
>
> (c) a doctor or other health professional."

The Judge's Decision

18. In a detailed and careful determination, Judge Povey accepted that a number of the elements of the ADR Rule were met based upon the evidence from the appellant, her sons in the UK and medical evidence.

19. At [14]–[23], Judge Povey set out the appellant's immigration history and concluded at [23] that the appellant's intention was not, when she came to the UK in February 2020, to return to India after her visit visa expired.

20. Then, at [24]–[29] Judge Povey set out the evidence concerning the appellant's health, ending with the most recent independent medical evidence from Dr Ahmad in his letter dated 18 January 2021 as follows:

> "The Appellant's Health
>
> 24. The Appellant has a number of health issues. There were a number of documents regarding her diagnoses and treatment in India in evidence (at [66] – [72] of the Bundle). The most recent evidence, however, came from Dr Shakeel Ahmad, a consultant stroke physician at the Spire Hospital in Cardiff. In a letter dated 18 January 2021 following a video consultation with the Appellant and her family in the UK, Dr Ahmad recorded the following diagnoses (at [73] of the Bundle):
>
> 1. Probable vascular dementia. Abbreviated mini mental score 1/10.
>
> 2. Type 2 diabetes mellitus
>
> 3. Renal impairment secondary to diabetes
>
> 4. Peripheral vascular disease
>
> 5. Bilateral renal artery stenosis
>
> 6. Benign positional vertigo with unsteady gait
>
> 7. Recurrent UTIs every 2~3 months
>
> 8. Hard of hearing

9. Normocytic normochromic anaemia

25. The Appellant is prescribed various medications (listed at [73]). Dr Ahmad described the remote examination he was able to conduct and his conclusions, as follows (at [74]):

> Looking at her current needs it appears she requires daytime and night time care which is currently being provided by her family here in the UK.
>
> Examining her I did an abbreviated mini mental test and she only scored 1/10. On examination of the upper limbs there appeared to be a very mild drift in that left arm. She was able to stand with assistance but needs supervision while walking. She was very unsteady on her feet. She was unable to perform the heel to toe test as there is a high risk of falling. Her cognitive impairment is likely to be due to small vessel disease secondary to her diabetes which is now presenting as a vascular dementia.
>
> She will need to continue on her current medication and her current functional needs are being met by her family. In view of this lady's cognitive state and frailty she would be at significant risk of living by herself and would require supervision and assistance to travel.

26. Since arriving in February 2020, the Appellant has been living predominantly with her son, Tomy Thomas in Bristol. Mr Thomas' brother Vincent lives on the same road and the Appellant has spent some time with him and his family. As explained above, the parties agreed that it was on necessary to hear evidence from Tomy Thomas, as he was best placed to comment upon the Appellant's daily living needs.

27. Mr Thomas' oral evidence regarding the functional impact of the Appellant's health conditions on her was not challenged. In summary, the Appellant:

    27.1. Can get out of bed on her own, as long as the bed is low to the ground. Otherwise, she needs assistance.

    27.2. Needs help to wash, use the toilet and dress.

    27.3. Needs help changing her incontinence pads and measuring her blood sugar. On occasions, she also needs reminding to take her medication.

28. There was some additional support for this aspect of Mr Thomas' evidence. On 23 October 2021, the Appellant was treated at her local hospital following a fall in the shower. She had a cut to her head, which was cleaned and stitched. The Appellant was discharged the same day (at [75] – [78] of the Bundle).

29. The Respondent did not materially challenge the medical evidence but invited the Tribunal to treat Mr Thomas' evidence regarding the Appellant's functional needs with circumspection, given the underlying intent behind the 2020 visit (as found above). I found some force in Mr Arkless' submission on this point. The Appellant has provided no medical, objective or independent evidence of the Appellant's care needs or functionality since the letter of 18 January 2021 from Dr Ahmad".

21. At [30], Judge Povey reached the conclusion that, on the evidence, the appellant required long-term personal care to perform everyday tasks because of her age, illness and disability as follows:

> "30. However, what cannot be ignored is the Appellant's age, her diagnoses and her prescription medication. Even allowing for the circumspection suggested by Mr Arkless, I found on balance that by reason of age, illness and disability, the Appellant requires long-term personal care to perform everyday tasks. In addition, as evidenced by the care and assistance provided to the Appellant whilst in India by her brother-in-law and subsequently through paid services, that need for personal care pre-dates the Appellant's arrival in the UK in February 2020".

22. At [31]–[35], the judge set out the evidence (not accepting it in its totality) as to the support and assistance given to the appellant in the UK, in particular by her family:

> "Support & Assistance in the UK
>
> 31. The Appellant lives with Mr Thomas and his family. They provide for her financially and also meet her day to day care needs. I did not understand it to be in dispute that the Appellant's family in the UK have sufficient income to be able to financially meet her accommodation and living costs.
>
> 32. The Appellant does not have medical insurance. Although she takes prescription medication, Mr Thomas denied that the Appellant was registered with a GP in the UK. He claimed that the medicines she takes are from India, with friends being asked when they travel to India to bring back three or six months worth of medication for the Appellant. He also claimed that during her hospital treatment following the fall in the shower, high blood pressure had been noted and it was recommended that the Appellant see a GP. However, Mr Thomas maintained that even then, the Appellant did not see a GP or register with a local surgery.
>
> 33. I had a number of concerns regarding this aspect of Mr Thomas' evidence:
>
> 33.1. There was no evidence from any of these friends confirming that they were asked to bring medication back from India as claimed. Similarly, there was no evidence from any of the Appellant's doctors or pharmacists in India also confirming that they made up prescriptions of such duration to be collected on behalf of the Appellant. There was also no reference to this alleged practice in any of the witness statements provided. No explanation was provided for the absence of such evidence.
>
> 33.2. The absence of evidence also meant that there was no explanation as to how the Appellant had been able to secure her prescription medication from India during the travel restrictions which have been in place at various times since the commencement of the Covid-19 pandemic.
>
> 33.3. The hospital discharge summary following the Appellant's fall in October 2021 was addressed to Dr Harris at Fishponds Health Centre. The summary also included a request for the Appellant's GP to review her blood pressure. It was apparent from the discharge summary that, as far as the hospital were concerned, the

> Appellant was already under the care of Dr Harris and registered with the Fishponds surgery.

34. Dr Ahmad's report was addressed to a Dr Vanessa Kerai at The Independent General Practice (at [73]). When this was put to Mr Thomas in cross-examination, he claimed to have no knowledge of why the report was address to her or even who she or the practice were. However, a cursory investigation reveals that the practice is a private health care provider. I also noted that there was reference in the witness evidence to a request by the Respondent in the course of the application process for the medical opinion of the UK-based doctor (see, for example, Paragraph 8 of Mr Paranikulangar's statement, at [48] –[49] of the Bundle).

35. However, I was again driven to conclude that, notwithstanding Mr Thomas' bare assertion to the contrary, the Appellant has, since at least October 2021, been registered with the Fishponds GP surgery, which is an NHS primary care service. That is, in my judgment, the most plausible explanation for both the hospital discharge summary and the on-going (and apparently unbroken) availability of prescription medication".

23. At [36]–[48], Judge Povey set out the evidence from the appellant, her family and Dr Ahmad concerning the availability of care in India to meet the appellant's needs:

"Support & Assistance in India

36. The Appellant claimed that she had previously received help with her day to day needs in India from neighbours and her brother-in-law. Unfortunately, her brother-in-law passed away in October 2018 and the Appellant claimed that she no longer had any neighbours or relatives in India able to assist her (Paragraph 7 of her witness statement, at [44] of the Bundle).

37. The Appellant also claimed the following (also at Paragraph 7 of her witness statement):

> …After [my brother-in-law's] death I didn't stayed [sic] in India for long but spent most of the time with my children in the UK. Now no one is available to make arrangements for these things whenever it is necessary.

38. According to the evidence, the Appellant applied for a visit visa in September 2018, within which she proposed to come to the UK on 10 October 2018 (at [196] – [208] of the Bundle). It appeared from the copy of the Appellant's passport that she actually arrived in the UK on 12 November 2018 (at [165]), returning to India on 22 April 2019 (at [164]). The Appellant entered the UK again on 3 July 2019 (at [165], returning to India this time on 29 December 2019 (at [164]), before returning to the UK once more on 29 February 2020.

39. In contrast to the Appellant's three separate visits to the UK between November 2018 and February 2020, her 2018 visa application recorded that she generally visited the UK on an annual basis between 2011 and 2016 (at [201] of the Bundle).

40. The Appellant's travels were consistent with her account of spending far greater time with her family in the UK following the death of her brother-

in-law, which in turn supported the contention that the Appellant's primary source of day to day care and assistance in India was initially lost with his death.

41. However, Mr Thomas explained in his oral evidence how the family in the UK had arranged care for the Appellant whilst she was in India. This had been done through an agency, who provided a full-time nurse to care for the Appellant in her home. The service was paid for by the Appellant's family. However, the first and the second nurses employed both left, the second, as detailed above, leaving shortly before the Appellant came to the UK in February 2020.

42. Mr Thomas also explained that, whilst care homes are available in India, it would be culturally inappropriate for the Appellant's family not to care for her or to send her to a care home. The family did not want the Appellant to feel abandoned or for others to think that she had been abandoned. It was for that reason that the family arranged for at-home care via the nursing agency. Mr Thomas also explained that the plan had been to hire a further home nurse and an additional person to provide support, had the Appellant returned to India.

43. Mr Thomas' oral evidence was somewhat at odds with his written evidence. He made no mention of arranging nursing care for the Appellant. Indeed, his statement went somewhat further, suggesting that the Appellant would be without any assistance on return to India and that she had been able to cope alone following her brother-in-law's death but that was no longer possible following the decline in her health (Paragraph 6 of his statement at [51] of the Bundle).

44. There was evidence of the Appellant receiving treatment whilst in India. In reality, it was not contended that health care services were unavailable in India. Rather, it was submitted that the quality and accessibility of the available care did not match the care which had been provided to the Appellant during the last two years by her family. Much of that was premised on the alleged decline in the Appellant's health since she arrived in the UK.

45. It was important to understand how, if at all, the Appellant's health has changed since February 2020. It was evident from Mr Thomas' oral testimony that the family had been arranging care for the Appellant following the death of her brother-in-law in 2018 and there was no practical reason given for why such arrangements could not continue. Indeed, according to Mr Thomas, that had always been the plan for when the Appellant returned to India (to pay for another nurse and someone else to support the Appellant). It was, on Mr Thomas' evidence, only the Appellant's decline in health since arriving in the UK which rendered such arrangements no longer feasible.

46. In her witness statement, the Appellant claimed that her health conditions had 'worsened recently' (Paragraph 6 at [44] of the Bundle). Mr Thomas referred to how the 'worries and anxieties regarding how to lead an independent life in India worsened [the Appellant's] physical and mental capacity' and that all that Appellant's health matters 'have worsen [sic] after coming to the UK' (Paragraphs 4 & 5 of his statement at [51]). However, no detail was provided in the witness evidence of what the decline was or, more importantly, how it affected the Appellant, compared to her health and functional limitations whilst in India.

47. There was some limited indication of the Appellant's health prior to coming to the UK in the medical evidence (at [66] – [72] of the Bundle). Comparing those records with Dr Ahmad's report, the material change in the Appellant's health (so far as recorded in the evidence supplied) was his diagnosis of probable vascular dementia, based in part on the results of the mini mental test he undertook. In contrast, the hospital discharge summary noted that, upon examination, the Appellant was *'[A]lert and orientated'* (at [76]), although there was no evidence of any cognitive tests being conducted whilst the Appellant was at the hospital. It appeared that, at its highest, the Appellant was alert and orientated at the time of examination, a conclusion which was not necessarily at odds with a diagnosis of vascular dementia, given the disease's progressive nature.

48. As for the functional impact upon the Appellant, Dr Ahmad was of the following opinions (at [74] of the Bundle):

> Looking at her current needs it appears she requires daytime and night time care which is currently being provided by her family here in the UK.
>
> …
>
> In view of this lady's cognitive state and frailty she would be at significant risk of living by herself and would require supervision and assistance to travel".

24. At [49]–[50], Judge Povey reached the conclusion that the appellant's needs could be reasonably and adequately met on return to India:

> "49. In practical terms, the support and care identified by Dr Ahmad was essentially the same as was being provided to the Appellant prior to coming to the UK and, on Mr Thomas' evidence, was what the family would arrange to be provided for her on return. As found earlier, the Appellant's long-term requirement for personal care to meet her day to day needs arose when she was in India and existed for some time before she came to the UK.
>
> 50. Drawing those findings together, the Appellant's health and daily living needs as they currently are could be reasonably and adequately met on her return to India, with the provision of nursing and at-home support arranged and funded by her sons".

25. At [52], Judge Povey repeated his finding that the appellant's health and care needs could be "reasonably met in India":

> "52. The Appellant has medical needs for which she requires care, support and supervision. However, for the reasons set out above, those health and care needs can be reasonably met in India, through a combination of the country's health care services and the provision of at-home care, both medical and functional (which the Appellant was accessing and receiving prior to coming to the UK in February 2020)".

26. One further finding made by Judge Povey, albeit made in relation to para 276ADE, is important to note at [53]:

> "53. The Appellant's circumstances upon return to India would not be significantly different to what they were when she left in February 2020.

> Even allowing for the onset of vascular dementia, her care needs, on the evidence presented, have not materially changed. Prior to coming to the UK, care was provided to her at home by a nurse paid for by her family. There was no reason why that arrangement could not continue. In addition, any additional care needs could be met by the family's intention to also fund additional at-home support for the Appellant (per Mr Thomas' oral evidence)".

27. Turning then to para 276ADE, at [53]–[56] the judge found that the appellant could not meet the requirements of para 276ADE(1)(vi) because there would not be very significant obstacles to her integration on return to India. That finding is not directly challenged in the grounds and was not raised by Mr Richardson in his oral submissions and I need say no more about that finding.

28. Finally at [57]–[65], the judge accepted that the appellant had established family life with her family in the UK and that her removal would engage Art 8.1. However, at [61]–[63], the judge concluded that the public interest outweighed any interference with the appellant's family life (and to the extent he accepted she had established any separate "private" life) as proportionate.

29. At [65], the judge noted that his findings and conclusions would be a "disappointment to the Appellant and her family" and he said:

> "65. I do not doubt the love and affection the Appellant and her family have for each other nor the understandable desire amongst her family to ensure the Appellant is cared for and her needs are met. The family would prefer, again quite understandably, that such care and support could be provided by them in the UK. However, for the reasons explained above, those wishes, when considered in the context of the facts of this appeal, do not outweigh the public interest in effective immigration control".

The Submissions

30. On behalf of the appellant, Mr Richardson submitted that the judge in looking to the ADR Rule in determining the appeal under Art 8, failed to take into account the appellant's attachment to her family in the UK.

31. Mr Richardson pointed out that the judge accepted that the appellant required long-term personal care to perform everyday tasks as required by E-ECDR.2.4 and 2.5 of Appendix FM (see [30]). Mr Richardson submitted that the judge had erred in finding that the required care was reasonably available to the appellant in India. Mr Richardson submitted that the judge had failed properly to have regard to the needs of the appellant for emotional and psychological support from her family.

32. Mr Richardson relied upon the Court of Appeal's decision in Britcits at [59] where the Court of Appeal stated 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, and the standard of such care must be what is required for that particular applicant". In assessing the

reasonableness of the care, the Master of the Rolls noted that that was "capable of embracing emotional and psychological requirements verified by expert medical evidence".

33. Mr Richardson relied upon the witness statements from the appellant (at page 183 of the bundle), her two sons Jose and Tomy (at pages 187 and 190 of the bundle) and the letter of Dr Ahmad dated 18 January 2021 (at page 213 of the bundle) which, Mr Richardson submitted, supported his submission that the judge had failed to take into account the appellant's emotional and psychological needs for her family.

34. Further, Mr Richardson submitted that, even if he could not establish an error of law in relation to the judge's approach to the ADR Rule, nevertheless the same issue was relevant under Art 8 outside the Rules. Mr Richardson submitted that the judge had failed to give proper weight to the strength of family life between the appellant and her sons (and their families) in the UK. He submitted that the judge had underplayed her dependency by stating that she had lived apart from them until February 2020 (at para 61.6) because he had failed to take into account her immigration history of visits to the UK from September 2018, through 2019 until she came to the UK most recently in February 2020. Mr Richardson submitted that the judge had made no proper assessment of the strength of the emotional bond and had in para 61 emphasised, instead, the public interest issues in carrying out the balancing exercise required for proportionality under Art 8.2.

35. In that latter regard, Mr Richardson accepted that, contrary to the view expressed by the judge in granting permission, Judge Povey had not wrongly applied s.117B(5) of the Nationality, Immigration and Asylum Act 2002 (as amended) by having regard to the "precarious" nature of the appellant's family life in assessing what weight to afford it. He accepted that was a relevant factor, applying the Strasbourg jurisprudence, for example in Jeunesse v Netherlands (2015) 60 EHRR 17.

36. On behalf of the respondent, Ms Rushforth submitted that the judge had properly taken into account all relevant evidence in applying the ADR Rule. She submitted that in Britcits at [59], the Court of Appeal had referred to "emotional and psychological requirements" but that had to be "verified by expert medical evidence". Ms Rushforth submitted that Dr Ahmad's report made no reference to the appellant's need for emotional or psychological care or support but only physical support. As regards the other evidence, the judge acknowledged the emotional ties of the appellant to her family at [65]. She submitted that the evidence before the judge went no further than recognising the appellant's potential vascular dementia. Ms Rushforth submitted that the judge had fully taken into account the appellant's connection with her family both under the ADR Rule and under Art 8 outside the Rules.

Discussion

37. I do not accept Mr Richardson's submission that the judge, in his detailed and careful determination, failed properly to apply the ADR Rule in the light of all the evidence including the evidence of the appellant, her family and Dr Ahmad as to her needs, and whether they could be met, in India. I bear in mind the evidential requirement in Appendix FM-SE at paras 32 and 35, at least as regards the ADR Rule, for supporting medical evidence from a doctor/health professional.

38. It was the family's evidence before the judge that they had provided adequate care to the appellant in India prior to her arrival in February 2020. Their evidence was that it was the decline in the appellant's health which rendered such arrangements no longer feasible (see, for example, [45]). At [46]–[48], the judge set out the evidence from the appellant, and her family that her condition had worsened since coming to the UK. The judge noted at [47]–[48] Dr Ahmad's evidence of a diagnosis of "probable vascular dementia". However, as Judge Povey pointed out at [48], Dr Ahmad's evidence went no further than saying that her "current needs" required 24 hour care which was currently provided by her family in the UK. It did not state that this care could only, or only reasonably, be provided by the family in India to meet the appellant's reasonable needs.

39. The judge had well in mind what was said by the witnesses in their witness statements concerning the care given by them to the appellant (see, for example, the appellant's witness statement at paras 5 and 10–11, the witness statement of Jose at para 4 and in the witness statement of Tomy at para 4). The judge was also, plainly, well aware of the love and affection and support given to the appellant by being with her family (see, for example, [65] of his determination).

40. Dr Ahmad's evidence did not, as Judge Povey concluded, provide independent medical evidence that the care which the appellant received in the UK (including by living with her family in the UK) could only reasonably be provided in India if she was only provided with that care by her family in India. Dr Ahmad's letter stated that "in view of this lady's cognitive state and frailty she would be at significant risk of living by herself and would require supervision and assistance to travel". The evidence went no further than saying that she required, in effect, 24 hour care because of her health condition and that her current needs were "being met by her family". There is no suggestion that the care previously provided to the appellant in India through the financial support of her family in the UK and which postdates the death of her brother-in-law in October 2018 was not reasonable to meet her needs including arising from his diagnosis of "probable vascular dementia".

41. In my judgment, Judge Povey was reasonably and rationally entitled to conclude, as he did at [49], [50] and [53] that, consistently with the approach in the Britcits case, the appellant's needs would be reasonably met in India on return.

42. Turning now to Mr Richardson's second line of argument relating to Art 8 outside the Rules, the judge plainly had in mind the appellant's immigration history including her visits to the UK to her family between September 2018 and up to 29 February 2020 (see [38]). The judge made clear findings, based upon the evidence of the appellant's family, that prior to her arrival in the UK in February 2020, her needs were being reasonably met in India through their financial support providing for the care required. The judge did not accept that the evidence showed that the appellant's health had worsened, through vascular dementia, such that her continued care could not reasonably be provided in India. The judge did not, therefore, fail to have regard to the appellant's circumstances (and visits to the UK) prior to February 2020 and focus exclusively on her health after February 2020. The judge, in my judgment, fully considered the situation of the appellant over the timescale as a whole.

43. Further, and for the same reasons that I reject Mr Richardson's first point, the judge did not fail to take into account the appellant's changing needs and the strength of her bonds with her family in the UK when considering Art 8 outside the Rules. Running throughout the judge's careful determination is his consideration of the evidence as a whole including that of the appellant herself and her family as to the bonds between them. The judge dealt with the evidence in great detail when considering the ADR Rule and, in essence, brought forward those findings when considering the issue of proportionality, for example at [61.2] and [61.5]–[61.6]. The judge's recognition of the "love and affection" between the appellant and her family and the care provided for her in the UK is reflected in [65].

44. Given the judge's findings in relation to the ADR Rule and the public interest which was plainly engaged under s.117B(1) of the NIA Act 2002, the judge's finding that the appellant's removal would not be disproportionate was both rationally and reasonably open to him on the evidence.

45. I should deal with one final point. As I noted earlier, Mr Richardson placed no reliance upon the point raised by Judge Nightingale when granting permission that the judge had misapplied s.117B(5) by giving less weight to the appellant's family life, although she was not unlawfully in the UK, because her immigration status was precarious. Mr Richardson was right not to do so. At [61.3], Judge Povey made no reference to s.117B(5) and there is no reason to infer that he was doing so. Indeed, his reference to the Supreme Court's decision in Rhuppiah v SSHD [2018] UKSC 58 rebuts such an inference since in that case the Supreme Court recognised the approach of the Strasbourg Court, including in Jeunesse, that where the persistence of family life would be "precarious" in the sense that the parties who have the benefit of family life know that one of them has no expectation of maintaining that family life, for example, under the Immigration Rules, then the weight to be given to that family life may be diminished and, in essence, any interference will be disproportionate only

where there would be “unjustifiably harsh consequences” (see [27]–[37] of Rhuppiah). Judge Povey, weighing the public interest against the appellant’s and her family’s circumstances, concluded at [62] that the consequences would not be “unjustifiably harsh[]”. In truth, given the judge’s sustainable findings under the ADR Rule, there was little, if anything, beyond her health circumstances which could have impacted upon the proportionality assessment under Art 8 outside the Rules and justify a finding of “unjustifiably harsh consequences” to the appellant (or her family).

46. For all these reasons, the judge did not err in law in dismissing the appellant’s appeal under Art 8 of the ECHR.

Decision

47. The decision of the First-tier Tribunal to dismiss the appellant’s appeal did not involve the making of an error of law. That decision, therefore, stands.

48. Accordingly, the appellant’s appeal to the Upper Tribunal is dismissed.

Signed

Andrew Grubb

Judge of the Upper Tribunal
19 August 2022