IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-002632

First-tier Tribunal No:
HU/04009/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
29 May 2023

Before

UPPER TRIBUNAL JUDGE RINTOUL

Between

MRS DIAMANTEE PATEL
(NO ANONYMITY ORDER MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Modupe, Prime Solicitors
For the Respondent: Mr W Kain, Senior Home Office Presenting Officer

Heard at Field House on 19 April 2023

DECISION AND REASONS

1. The appellant appeals against a decision of the Entry Clearance Officer made on 6 July 2021 to refuse her entry clearance to the United Kingdom as an adult dependent relative, that is her son, Mr Tejpal Patel. Her appeal against that decision was dismissed by First-tier Tribunal Judge Gribble for the reasons set out in a decision promulgated on 21 January 2022. The appellant was granted permission to appeal against that decision to the Upper Tribunal, and, for the reasons set out in the Upper Tribunal's

decision promulgated on 7 March 2023, that decision was set aside. A copy of that decision is annexed to this decision.

Background

2. The appellant is a citizen of Zimbabwe, born on 20 July 1950. She and her husband had two children, Pratap Gunvant Patel and Tejpal Gunvant Patel ("the sponsor"). Her husband died on 23 April 2015, and she has since then lived alone, depending on her sons for emotional and financial support.

3. It is her case that her health began to deteriorate after knee replacement surgery carried out in India in 2012. She became unable to do normal everyday things due to a reduction in mobility and became heavily reliant on her husband before he died in 2015. Although reliant on domestic help those she engaged proved to be untrustworthy. Then on 6 September 2020 she sustained an injury to her head after falling.

4. In March 2021 a group of people tried to rob her house, and, in that incident, her gardener was killed. This caused her significant distress such that in addition to her deteriorating health, she decided along with her sons to make an application to come to the United Kingdom to live with them.

5. The respondent refused the application on the basis that she was not satisfied that the appellant met the requirements of the Immigration Rules, specifically E-ECDR.2.4. and E-ECDR.2.5. The refusal was on the basis that she was not satisfied that she requires long term personal care to perform everyday tasks, nor that she would be unable to obtain the required level of care in Zimbabwe. The respondent was not satisfied either that there were exceptional circumstances such that refusal of entry clearance was disproportionate.

The Law

6. In order to obtain entry clearance to the United Kingdom as an adult dependent relative, an applicant must fulfil the requirements of the Immigration Rules which provides as follows:-

> 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-
>
> 1. (a) it is not available and there is no person in that country who can reasonably provide it; or

2. (b) it is not affordable.

7. In Britcits v SSHD [2017] EWCA Civ 368 the Court of Appeal held [59]:-

> 59. 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.

8. In Ribeli v SSHD [2018] EWCA Civ 611 the Court of Appeal held:-

> 46. In my view, FTT Judge Napthine had expressed the point too strongly when he said that the Respondent had "commenced his reasoning on a *false* basis – to state 'she needs assistance with tasks as basic as cooking, shopping and washing herself' does not 'indicate that you currently receive the care that it is claimed you need.'" (Emphasis added) The point that the Respondent was making was a perfectly reasonable one; it certainly was not a "false" one. He was observing that the difficulties experienced by the Appellant could not be as fundamental or severe as was being submitted because, if they had been, she would not be able to wash herself or eat. It was reasonable for the Respondent to query the need for clear evidence on what exactly was happening on a day to day basis in the Appellant's life.
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> ...
>
> 49. I also agree with the second reason that UT Judge Clive Lane gave for setting aside the FTT determination. There was no independent evidence that the Appellant was unable, even with the practical and financial help of her daughter and sponsor in the UK, to obtain the required level of care in the country where she was living. As the UT Judge observed at para. 8, that is what the relevant Rules require: see e.g. para. 35 of Appendix FM – SE. The only evidence that was placed before the FTT on behalf of the Appellant (the GP's letter of 18 December 2013) referred only to the Table View area, where the Appellant lives, not to the larger Cape Town area, still less the whole of South Africa.

9. In Mobeen v SSHD [2021] EWCA Civ 886 Carr LJ recognised that the test is “rigorous and demanding” [41]. She observed also [68] that the requirement to be met by an adult dependent relative seeking to settle in the United Kingdom will be a powerful factor in any Article 8 assessment of proportionality.

10. I have considered carefully the evidence of the appellant's illness and disability. The evidence from the appellant set out in her witness statement is limited to what she says at paragraph 3:-

> "My health really began to deteriorate after my knee replacement surgery in 2012 (exhibit DP4), as I couldn't do the normal everyday things such as bending to clean, climbing the stairs, getting in and out of the bathtub and due to a reduction in mobility, I couldn't go to the shops as usual. I became heavily reliant on my husband before he passed away in 2015".

11. She also says in her declaration of 6 January 2020 that she had had difficulty in getting funds transferred to her, that she needed foreign currency to buy medicine, food and other expenses. She says also that sometimes the medicines are not available in Zimbabwe, and she arranged to get them from Botswana or South Africa. There is no mention in that statement of difficulties caused by untrustworthy domestic help.

12. The medical evidence is limited. There is a letter from the appellant's doctor dated 2 December 2020 which records that she had a severe fall on 6 September 2020 and had been seen at Corporate 24 Hospital and that she sustained two vertical cuts about 2 centimetres on the forehead. That is confirmed by a letter from Corporate 24 Hospital. There is also a letter from Mater Dei Hospital indicating that she had been admitted on 13 December 2019 and discharged on 17 December 2019 but the reason for this is not explained.

13. A more recent letter from the appellant's GP, Dr Nyamande, dated 7 November 2022, states as follows: -

> "I confirm that Diamantee Patel ... has been known to us since 2008 and now requires urgent medical care. Her health deterioration has been made worse following her knee replacement surgery in 2012, and she is unable to carry out normal daily tasks due to her severe mobility issues, such as cleaning, bathing, climbing stairs, going to the shops on her own. She is in need and is dependent on daily assistance and support.
>
> The current healthcare system in Zimbabwe does not offer the type of care and support that Mrs Patel needs to live a normal fulfilling life. It would be in her general wellbeing to be close to and surrounded by those who love and can best care for her on a daily basis, such as her children".

14. Material has also been provided which relates to her knee replacement surgery in 2012 including test results for plasma glucose dated 23 November 2012.

15. There is a further letter from Dr Nyamande dated 2 March 2023 which states:-

> "I have been the long term doctor of Diamantee Patel.
>
> She attended my practice feeling extremely distressed and depressed. She did mention the refusal of the renewal of her residence visa to the UK to see her sons. In my considered opinion, this may be a factor, as well as her

> other medical issues to her current anxiety and her poor mental state of mind. I have recommended antidepressant tablets".

16. In his evidence Mr Patel said that his mother suffers from high blood pressure and is borderline diabetic although her blood sugar varies. He said that her need for care was mentioned in the letters from Dr Nyamande. It was put to him that the letters did not refer to health conditions requiring daily care. He replied that she requires urgent medical care and daily support. As to why the letter would not contain more detail, he said he was not a doctor and that it was sufficient to show that she meets the requirements of the Rules. He said that her care had not been as long as 2012.

17. Mr Patel said that his mother's domestic help is untrustworthy. Money gets stolen, getting medication is hard and they often had to ship it from the United Kingdom as it is not available in Zimbabwe.

18. He said that she had been to the United Kingdom on several occasions, eight times, and she travelled on her own although sometimes he had travelled with her. He said that she gets wheelchair assistance when she travels by air.

19. The letters from the doctors do not set out in any detail the appellant's health problems. The only evidence capable of showing that she is borderline diabetic be a test, which is not interpreted, from 2012 which given the date could not be reliable as evidence of a current problem. Although it is said that she suffers from high blood pressure this is not mentioned by the doctor, nor a detailed not of the medications prescribed to her either for her blood pressure or borderline diabetes. There is simply no detail as to what she can do and it is unclear why her mobility was reduced after knee surgery. What is set out above is the extent of the medical information provided by the appellant's doctors. It is more than a bare assertion of what the appellant herself says. Certainly, her disabilities do not appear to have prevented her from travelling extensively, although I accept that she may well have had assistance on getting onto and off a plane and being provided with a wheelchair. Further, there is no proper explanation as to why any of the conditions that she has requires specific help or what that help is.

20. There is no evaluation of any disability. For example, details of any physical examination, whether and to what extent she can move her legs or arms, of how far she is able to walk or whether she needs assistance to do so, for example, using a walking frame, walking stick or similar equipment. There is no detailed assessment of what she can and cannot do. Accordingly, I am not satisfied that the requirements of paragraph E-ECDR.2.4. are met. In reaching that conclusions I do not doubt the the sponsor's sincerity but it is simply, given the paucity of medical evidence, insufficient to discharge the burden.

21. Further, and in any event, even had I been satisfied that E-ECDR.2.4. was made out, there is insufficient evidence to show what the required level of

care is or why it could not be provided in Zimbabwe. I note that the appellant says that she has access to £60,000 of her own savings and that her sons are able to support her financially. The sole reason given as to why she cannot be supported there is because her domestic help is untrustworthy. But few details are given. There is no identification of how many people were involved in providing care, for how many hours, whether they were all taking money from her under false pretences. Further, if it is the case that she needs personal care to perform everyday tasks, then clearly somebody must be providing that or she must explain why she is unable to survive without that. These matters are not sufficiently dealt with in the evidence, and it was for the appellant to prove her case.

22. There is insufficient evidence to show that the required level of care is not or cannot be provided. There is only the written evidence of the appellant and the oral evidence of the sponsor. There is no evidence of any investigation undertaken in Zimbabwe as to what level of care could be provided in, for example, an old people's home or similar sheltered environment of what is available. There are simply assertions to that effect by them and the doctors unsupported by documentary evidence

23. Accordingly, for these reasons, I am not satisfied that even if E-ECDR.2.4. was met that the requirement of E-ECDR.2.5. is met.

24. I am not satisfied that there are exceptional circumstances in this case such that, refusal to grant entry clearance is disproportionate. In reaching that conclusion, I have no reason to doubt the appellant's account of the attack on her home. That is consistent with the background information about Zimbabwe and is adequately documented. I have no reason to doubt the sponsor's account of what happened. I am satisfied also that this must have been extremely worrying for the appellant, if not traumatic, and was also very worrying to her sons in the United Kingdom. I have no hesitation in accepting that they would prefer her to be living in the United Kingdom where they would feel she would be safer and where she would be living with her sons and grandchildren.

25. I do, however, recall that significant weight has to be attached to the fact that she does not meet the requirements of the Immigration Rules. I adopt a balance sheet approach.

26. I accept that the appellant and the sponsor are close. But I am not, however, satisfied, applying the test set out in Kugathas, that there is at present a family life between the appellant and the sponsor or between the appellant and anyone else in the United Kingdom. The appellant clearly has savings of her own and there is simply insufficient evidence to show that she is necessarily dependent financially on her sons. I am also not satisfied by the evidence before me that there are ties over and above the natural ties between an adult parent and adult children such that, looking at the evidence as a whole, I am satisfied that a family life exists here.

27. Further, and in any event, refusal of entry clearance simply maintains the status quo. Whilst I accept, applying Section 117B of the 2002 Act, that the appellant speaks English and would not be a burden on the state, those are neutral factors.

28. Accordingly, for these reasons I am not satisfied that the refusal of entry clearance was a disproportionate interference with the appellant's Article 8 rights. I therefore dismiss the appeal on all grounds.

Notice of Decision

1. The decision of the First-tier Tribunal involved the making of an error of law and I set it aside.

2. I re-make the decision by dismissing the appeal on all grounds.

Signed Date 26 April 2023

Jeremy K H Rintoul

Judge of the Upper Tribunal
Immigration and Asylum Chamber

ANNEX – ERROR OF LAW DECISION

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: UI-2022-002632
[HU/04009/202]

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 31 October 2022	.....

Before

UPPER TRIBUNAL JUDGE RINTOUL
DEPUTY UPPER TRIBUNAL JUDGE MALIK KC

Between

DAMIANTEE PATEL
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation

For the Appellant: Mr Tejpal Patel, Sponsor
For the Respondent: Ms Susana Cunha, Senior Presenting Officer

DECISION AND REASONS

Introduction

1. This is an appeal from the decision of First-tier Tribunal Judge Gribble ("the Judge") promulgated on 21 January 2022. By that decision, the Judge dismissed the Appellant's appeal from the Entry Clearance Officer's decision to refuse her human rights claim made in an application for entry clearance to the United Kingdom.

Factual background

2. The Appellant is a citizen of Zimbabwe and was born 20 July 1950.

3. The Appellant made an application for entry clearance to the United Kingdom as an adult dependant relative on 5 April 2021. She sought to join her British citizen

son, Mr Tejpal Patel, in the United Kingdom. The Entry Clearance Officer refused that application on 6 July 2021 on the basis that the eligibility requirements in Paragraphs E-ECDR.2.4 and E-ECDR.2.5 of Appendix FM to the Immigration Rules were not met. The Entry Clearance Officer also held that the refusal of the Appellant's application for entry clearance was not be incompatible with Article 8 of the European Convention on Human Rights.

4. The Appellant's appeal from the Entry Clearance Officer's decision was determined by the Judge on paper. The Appellant had opted for a decision to be taken on her appeal without an oral hearing. The Judge held that the Appellant was unable to meet the requirements in the Immigration Rules and Article 8 was not even engaged. The Judge made an alternative finding that the refusal of the Appellant's application was, in any event, proportionate. The Judge accordingly dismissed the appeal by a decision promulgated on 21 January 2022.

5. The Appellant was granted permission to appeal from the Judge's decision on 1 September 2022.

Grounds of appeal

6. The short point made in the Appellant's grounds of appeal is that the Judge failed to take into account relevant documentary evidence in making her decision.

Submissions

7. We are grateful to Mr Patel, who appeared as Appellant's sponsor, and Ms Cunha, who appeared for the Entry Clearance Officer, for their assistance and able submissions. Mr Patel reiterated the point made in the grounds of appeal and submitted that he had filed a large number of documents relevant to the appeal on 24 July 2021. He submitted that those documents were not considered by the Judge. Ms Cunha acknowledged that the relevant documentary evidence was apparently not placed before the Judge. She, however, questioned as to whether the Judge's failure to take those documents into account was a material error of law. She submitted that those documents do not show that the Appellant in fact meets the requirements in the Immigration Rules.

Discussion

8. Rule 23(2)(g) of First-tier Tribunal (Immigration and Asylum Chamber) Rules 2014 placed an obligation on the Entry Clearance Officer to file with the First-tier Tribunal "any documents provided to the respondent in support of the original application". The Appellant had provided a large number of documents in support of her application for entry clearance. Some of those documents were included in the Entry Clearance Officer's bundle that was, according to the available information, uploaded on the digital portal on 21 January 2022. Mr Patel had also filed the documentary evidence under a cover letter dated 24 July 2021. The cover letter made certain submissions and itemised the attached documents. Regrettably, neither the Entry Clearance Officer's bundle nor the Appellant's evidence was placed before the Judge when she determined this appeal.

9. The Judge, at paragraph 10, observed that she had accessed the documents digitally on the Teams platform. The Judge noted the directions given to the parties as to the filing of the documents and then stated that the Entry Clearance Officer had not filed a bundle at all. The Judge, at paragraph 11, added that it was not possible for her to ascertain what documents had been filed by the Appellant

because none were available to her, and the Teams platform did not provide any further information. The Judge, at paragraph 12, noted that she had before her an email from Mr Patel dated 24 July 2021 referring to a number of documents. Those documents, however, were not before her. The Judge, at paragraph 22, found that the Appellant was unable to meet the requirements in the Immigration Rules because she had not been provided with any evidence.

10. It is tolerably clear that the Judge's decision is vitiated by a procedural irregularity. The Judge made her decision without considering the Entry Clearance Officer's bundle and the Appellant's evidence.

11. There is considerable force in Ms Cunha's submission as to the materiality of the documentary evidence provided by the Appellant. Paragraph E-ECDR.2.4 of Appendix FM to the Immigration Rules requires the Appellant to show that she, as a result of age, illness or disability requires long-term personal care to perform everyday tasks. The Appellant is also required to show, under Paragraph E-ECDR.2.5 of Appendix FM to the Immigration Rules, that she is unable, even with the practical and financial help of Mr Patel, to obtain the required level of care in Zimbabwe because it is not available and there is no person in that country who can reasonably provide it, or it is not affordable. We doubt whether the documentary evidence is sufficient to meet that threshold. The failure to meet the requirements in the Immigration Rules, as emphasised by the Supreme Court in *Hesham Ali v Secretary of State for the Home Department* [2016] UKSC 60 [2017] 3 All ER 20, at [53], is a relevant and important consideration in an assessment under Article 8. We also doubt whether the documentary evidence demonstrates that there is a family life, within the meaning of Article 8, between the Appellant and Mr Patel.

12. The Court of Appeal, in *ML (Nigeria) v Secretary of State for the Home Department* [2013] EWCA Civ 844, at [16], held that if there is any doubt as to whether a procedural error is material to the conclusion, that doubt is to be resolved in favour of the individual who complains of the error. Giving the benefit of doubt to the Appellant, with considerable reluctance, we find there was a procedural irregularity in the decision-making process amounting to a material error of law.

Conclusion

13. For all these reasons, we find that the Judge erred on a point of law in dismissing the Appellant's appeal. We set aside the Judge's decision in its entirety, with no findings of fact preserved. Having regard to paragraph 7.2 of the Practice Statement issued by the Senior President of Tribunals, we retain the appeal for the purpose of re-making of the decision. The appeal will be re-decided at the Upper Tribunal following a resumed hearing.

Decision

14. The First-tier Tribunal's decision is set aside and the appeal is retained at the Upper Tribunal for re-making of the decision.

Directions for the resumed hearing

15. We give the following directions as to the future conduct of this appeal:

    (1) The appeal shall be listed for a resumed hearing for two hours.

(2) The Appellant, no less than 21 days before the resumed hearing, shall file with the Upper Tribunal and serve on the Entry Clearance Officer, a paginated and indexed appeal bundle including,

(a) All the documentary evidence provided by the Appellant with her application for entry clearance and to the First-tier Tribunal,

(b) Any further documentary evidence that the Appellant wishes to rely on in support of her appeal,

(c) Witness statements capable of standing as the totality of the evidence-in-chief of any witnesses that the Appellant intends to call to give oral evidence, and

(d) A skeleton argument.

(3) The Respondent, no less than 7 days before the resumed hearing, shall file with the Upper Tribunal and serve on the Appellant a skeleton argument in reply.

16. These directions must be followed unless varied, substituted or supplemented by further directions. The parties are reminded that any failure to comply with these directions may result in the making of an adverse order pursuant to the power under Rule 10 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Anonymity order

17. The First-tier Tribunal made no anonymity order when making its decision. Likewise, having regard to the Presidential Guidance Note No 2 of 2022, *Anonymity Orders and Hearing in Private*, and the Overriding Objective, we do not consider that an anonymity order is justified in all circumstances. We therefore make no order under Rule 14(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008.

Zane Malik KC
Deputy Judge of Upper Tribunal
Immigration and Asylum Chamber
Date: 9 November 2022