



**Upper Tribunal
(Immigration and Asylum Chamber)**

**Appeal Number: UI-2022-005084
[HU/56962/2021]
IA/16105/2021**

THE IMMIGRATION ACTS

**Decision & Reasons Issued:
On the 25 May 2023**

Before

UPPER TRIBUNAL JUDGE PITT

Between

**Nurun Nahar Chowdhury
(NO ANONYMITY DIRECTION MADE)**

Appellant

and

Secretary of State for the Home Department

Respondents

Representation:

For the appellant: Mr Fazli, Counsel instructed by St Martin Solicitors
For the respondent: Ms Cunha, Senior Home Office Presenting Officer

Heard at Field House on 10 May 2023

DECISION AND REASONS

1. This is an appeal against the decision issued on 20 July 2022 of First-tier Tribunal Judge Fox which refused an appeal brought on human rights grounds in the context of appeal for entry clearance as an adult dependent relative.
2. Permission to appeal to the Upper Tribunal was granted on 22 November 2022.
3. The appellant is a national of Bangladesh, born on 10 October 1949.
4. On 7 June 2021 the appellant applied for entry clearance as the adult dependent relative of her adult son who lives in the UK.

5. The respondent refused the application on 16 September 2021. The respondent found that the appellant had not shown that as a result of age, illness or disability that the appellant required long-term personal care to perform every day tasks. The respondent also found that the appellant had not show that she was not able, with the practical and financial help of the sponsor, to obtain the level of care she required in Bangladesh because it was not available or that there was no person who could reasonably provide it or it was not affordable.
6. The appellant appealed the refusal of entry clearance to the First-tier Tribunal and the appeal was heard on 19 July 2022. The First-tier Tribunal made the following findings:
 - The appellant's daughter had cared for her before coming to the UK in 2019. The daughter had lived with her own family at that time and nothing indicated that at that time the appellant needed care at night; see [26]-[27], [41]
 - The evidence was not consistent as the appellant's daughter gave oral evidence that when she left Bangladesh it was proposed that her maternal aunt would care for the appellant. The aunt and the sponsor made no mention of this in their evidence; [28], [42].
 - Nothing indicted that the appellant or her sister had moved or that the appellant intended to relocate in Bangladesh to obtain care rather than coming to the UK; [29]-[30]
 - The appellant's sister's/maternal aunt's statement said nothing about caring for her sister and nothing showed that she could not assist the appellant; [31]
 - The medical evidence was unreliable; [32]-[35]
 - It was not accepted that the appellant's daughter had married into a family unknown to her own family. This suggested that there may be other relatives (presumably the appellant's daughter's in-laws) in Bangladesh who could assist the appellant; [37], [40]
 - The appellant's daughter had come to the UK some time after she had married and she had chosen to do so even though she was caring for the appellant; [39], [40]
 - The sponsor was paying for a "housekeeper" to care for the appellant. He maintained that the housekeeper was unwell and unreliable but did not provide meaningful knowledge of these matters in his witness statement. If matters were as stated by the sponsor he could be expected to look for another housekeeper; [42]-[45]
 - The evidence concerning care homes in Sylhet was not reliable; [36], [46]-[51]
7. The medical evidence here comprised two short letters from doctors in Bangladesh. The most recent letter was from Dr Zafrin and was dated 5 April 2022. This letter stated that the appellant suffered from a number of conditions including dyslipidemia, hypertension, diabetes, diabetic kidney disease, an earlier ischaemic stroke and depressive disorder. The doctor commented that the appellant "has to live alone in Bangladesh with poor household and mental support". This meant that "it is very difficult for her

to manage her health issues. In my opinion she needs to be taken care of [sic] her children and could be migrated to England to live with her children”.

8. The second medical letter was from Dr Mohith and was dated 23 June 2021. This stated that the appellant had been under his care for 16 years. The letter listed the same medical conditions and set out the medications that had been prescribed for the appellant. Dr Mohith maintained that “As both her son and daughter live in England, it is very difficult for her to live alone in Bangladesh under this health condition. So she needs to be taken to England to her children.”

9. That was the extent of the medical evidence before the First-tier Tribunal. The judge indicated at [32]-[35]

“32. The medical letter issued by Nahida Zafrin, dated 5 April 2022 (“medical letter”) confirms that the appellant and Dr Zafrin share a preferred outcome; appellant’s bundle page 26. There is no meaningful consideration of the appellant’s circumstances in Bangladesh.

33. Reliance upon the medical letter is considered in conjunction with the medical letter authored by Tanvir Mohith dated 23 June 2021 (“previous medical letter”). It is an unusual feature of the evidence that the medical letter makes no reference to the medical records available from their colleague at the same institution. I also note reliance upon a medical professional other than the doctor who confirms personal knowledge of the appellant for the last 16 years.

34. For the reasons stated herein it is reasonable to conclude that the medical letter was written while the sponsor was present in Bangladesh. It is not credible that there would be no reference to the alleged deterioration of health which allegedly shocked the sponsor and daughter upon their arrival on 19 February 2022.”

10. The First-tier Tribunal was correct to find that the medical evidence did not support the appellant’s case. Nothing in these letters provided any detail of how the appellant’s age and illness meant that she needed long term care. Neither letter set out any details of the appellant’s care needs and how extensive they were. Neither explained why the current situation of a housekeeper providing support would not be sufficient.

11. The First-tier Tribunal made these findings on the issue of a housekeeper caring for the appellant:

“44. There is no reference in the witness statement to the appellant’s enhanced concerns as stated in oral evidence. It is reasonable to expect that the sponsor would have more meaningful knowledge of the housekeeper’s inability or reluctance to provide appropriate services to the appellant’s household.

45. It is also reasonable to expect that the sponsor would have made enquiries to identify other suitable candidates for the role of carer/housekeeper while he was in Bangladesh. When the available evidence is considered in the round I do not accept that the sponsor has provided a reliable account of the appellant's domestic circumstances."

12. The First-tier Tribunal was also entitled to make these findings on the limited evidence on the housekeeper employed by the sponsor to care for his mother and lack of evidence of trying to find a similar person to provide the same level of support rather than maintain that the appellant would have to go to a day care centre which he could not afford.
13. The First-tier Tribunal was also correct in paragraph finding that the evidence on whether the appellant's sister could care for her, either by the appellant relocating or the sister relocating was, at best, unclear; see paragraphs 28, 31 and 42.
14. The grounds of appeal really on seek to reargue the appellant's case without indicating why the First-tier Tribunal was not entitled to reach the conclusions it did on the core issues of the extent of the appellant's poor health, the extent of her care needs and what steps had been taken to find another housekeeper who could assist her. The medical evidence was very limited and there was very limited evidence on the housekeeper who was supporting the appellant and whether another housekeeper could be found.
15. I accept that there are number of troubling features in the decision. The family obtaining evidence to the support the application whilst they were in Bangladesh is unremarkable and does not necessarily indicate that it was self-serving or should damage the credibility of the sponsor and the appellant's daughter; [35]. There was no apparent basis for finding that the sponsor had deliberately provided "limited and selective" evidence on care home facilities given that the adverse credibility findings are not sustainable. The speculation about the marriage of the appellant's daughter, the implication that she had concealed the presence of other relatives in Bangladesh who could assist the appellant in order "to bolster" the appeal (paragraphs 37 and 40) was not open to the judge, without more. It is not relevant that the appellant's daughter may have chosen to come to the UK knowing that this would leave her mother in difficulty; [39].
16. These shortcomings in the approach taken by the First-tier Tribunal also bring into his question his finding that the appellant could not have family life with her adult children as they lived independently and had "chosen" to live in a different country.
17. The appellant challenges these matters in the grounds, and, it appeared to me that these parts of the challenge had some force.

18. However, the matters I have set out above concerning the medical evidence on the extent of the appellant's health and care needs and the ability of the family to find another housekeeper have not been shown to be in error. The shortcomings in the decision set out above cannot be material, therefore, as the appeal could not succeed given the findings on the appellant's health and care needs.
19. I therefore found that although the decision did contain a number of incorrect approaches to the evidence, they were not material as the First-tier Tribunal provided sufficient and rational reasons for refusing the appeal.
20. For these reasons, I did not find that the decision of the First-tier Tribunal disclosed a material error on a point of law.

Notice of Decision

21. The decision of the First-tier Tribunal does not disclose an error on a point of law and shall stand.

Signed: S Pitt
Upper Tribunal Judge Pitt

Date: 19 May 2023