IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005764

[First-tier Tribunal No: HU/01711/2021]

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 30 August 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

N.A
(ANONYMITY ORDER MADE)

Appellant

and

The Secretary of State for the Home Department

Respondent

Representation:
For the Appellant: Ms A Bhachu (Counsel)
For the Respondent: Mr P Lawson (Senior Home Office Presenting Officer)

Heard at Birmingham Civil Justice Centre on 27 July 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, [the appellant] (*and/or any member of his family, expert, witness or other person the Tribunal considers should not be identified*) is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant, likely to lead members of the public to identify the appellant (*and/or other person*). Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge Broe promulgated on 9th February 2022, following a hearing at Birmingham on 8th October 2021. In the determination, the judge dismissed the Appellant's appeal against the Respondent's decision of 30th June 2021 refusing her permission for

leave to enter in the UK in order to join her daughter and Sponsor, Mrs Usma Shafiq, upon whom she claims to be dependent, as an elderly relative.

The Appellant

2. The Appellant is a citizen of Pakistan who was born on 1st April 1947, and is a female. She appealed against the refusal of leave to enter the United Kingdom as an Adult Dependent Relative ('ADR') of her daughter and Sponsor, Mrs Usma Shafiq.

The Appellant's Claim

3. The essence of the Appellant's claim is that she is a widow, who following her husband's death in 2017, has been suffering from physical and mental health issues, as she lives alone and has no close relatives in Pakistan. She has hired private carers whom she relies upon for her care but she has a daughter and a son-in-law, who are both professional people earning over £30,000 per annum in the UK, and whom she wishes to join here. The Appellant has provided a letter from a hospital in Pakistan where she was admitted in 2016 and which recommends that she is looked after by her family as she has been diagnosed with diabetes, asthma, stable coronary heart disease, anxiety, depression and osteoarthritis. The letter gives a list of medications taken by the Appellant.

The Judge's Findings

4. The judge observed how the Appellant had made regular visits to the UK on a multi-entry visit visa, always thereafter returning back to Pakistan. The Appellant now provided a statement that she had always complied with the Immigration Rules on all her visits to this country. However, her husband died in 2017 and her only daughter is married and settled in this country. The third party carers that she uses in Pakistan are paid for by her daughter and son-in-law "to help with daily chores and care" (paragraph 11). However, giving her increasing incapacity and deteriorating health she cannot trust being placed entirely in the hands of an external carer to fulfil her needs. Indeed, she has to change her carers on a frequent basis because of the demands for higher wages and lack of personal affection or care. There are emails provided from care homes in Pakistan confirming their charges and the Appellant maintained that these are beyond the reach of her family and that better care would be provided in the UK at less cost. On top of that, she would at least have one family member by her side to provide her with care.

5. At the hearing before the judge, evidence was given by the sponsoring daughter-in-law, who said that she was a British citizen and the Appellant's only child and that she and her husband had hired several carers to assist her mother but trust cannot entirely be placed on a hired carer. The carers were asking for a huge amount of money "but could not provide the love and affection her mother needs" (paragraph 13). The sponsoring daughter said that she and her husband had been supporting the Appellant for years and they continued to do so. She also provided two further documents at the hearing, one of which was from her mother's servant, Usman, who was asking for his pay to be doubled. The other letter was from a neighbour who sometimes helps the Appellant to bathe and change her clothes, which Usman cannot do, even though Usman was paid £120 per month (paragraph 14). When she was cross-examined, the sponsoring daughter-in-law said that her mother had recently become even more depressed and anxious and that she was "emotionally terrified and physically weak". She

had last seen her mother in November 2019. She had been unable to do so more recently because of the COVID-19 pandemic. Otherwise, the Appellant would travel to the UK frequently because she had a ten year visa. Since her father died, the sponsoring daughter said that the Appellant had been to the UK three of four times "although her health deteriorated" (paragraph 16). She has no other relatives in Pakistan.

6. The judge concluded that he could find "no reason to doubt that the Appellant suffers from the conditions described" (paragraph 27). Although the Appellant had travelled internationally alone between the time of her husband's death in 2017 and the COVID-19 pandemic, there was now "the letter from the hospital where she currently receives treatment" and that, "I therefore accept that she needs such care" (paragraph 29). However, with respect to whether the care now was unavailable or unaffordable in Pakistan, the judge found that this was not the case because "with the help of the Sponsor she has been able to engage staff" in Pakistan. The judge further held that, "they may not have been satisfied with their working conditions but it does not follow that suitable staff are unavailable or unaffordable" (at paragraph 31). Accordingly, the requirements of E-ECDR.2.5.(a) and (b) were not met. As for the Appellant's Article 8 rights the decision in **Agyarko [2017] UKSC 11** found there to be no disproportionate breach of the Appellant's rights or the existence of any exceptional circumstances. The appeal was dismissed.

Grounds of Application

7. The grounds of application state that the judge failed to give proper consideration to the Appellant's individual needs, including emotional and psychological needs when considering the availability of care. The judge also failed to give any consideration to the best interests of the Appellant's grandchildren "despite the sponsors specifically requesting such a consideration be made under Section 55 of the Borders, Citizenship and Immigration Act 2009" (hereafter 'BCIA'). Permission to appeal was granted Judge Cruthers on 13th April 2022 in the First-tier Tribunal on the grounds that it was at least arguable that the judge had erred in the "approach to the question of whether the Appellant would be unable to obtain the level of care she requires in their country of residence" (at paragraph 2). On 15th December 2022 a Rule 24 response was entered by the Respondent to the effect that the Sponsors had failed to show that they could not afford residential fees or professional 24 hour carers in Pakistan given their combined household income was in excess of £44,000. Insofar as the grandchildren of the Appellant were concerned, there was nothing preventing them from visiting Pakistan with their parents during school holidays. The decision by the judge was therefore not a disproportionate one.

Submissions

8. At the hearing before me on 27th July 2023, Ms Bhachu of Counsel appeared on behalf of the Appellant and placed reliance upon her Skeleton Argument of 25th July 2023. She submitted that the judge had accepted the medical conditions of the Appellant (at paragraph 29) and had also accepted that the Appellant required long-term personal care to perform everyday tasks (at paragraph 29). However, what the judge failed to consider was the Appellant's emotional and psychological needs given that he had expressly referred to her evidence that she was "emotionally terrified" and that loneliness was a major factor in her worsening medical condition. There were medical reports from Dr Dogar and

from Dr Ur-Rehman, both attesting that emotional care was best-served by her family. The judge failed to give such evidence due care and consideration.

9. For his part, Mr Lawson submitted that if the Appellant and her husband both worked in the UK it would be difficult to see how they could provide 24 hour care as they claimed they could do. The fact was that the judge had given a holistic consideration to the evidence before him when he said that, "I have given careful consideration to the Appellant's health ...." (see paragraphs 25 to 27) and that care homes are available in the Appellant's home country. The decision of the judge was a well thought out decision.

10. In reply, Mrs Bhachu submitted that the judge had not dealt with the emotional and psychological impact of the decision against her on the Appellant. This was important given that the judge had accepted that the Appellant needed long-term personal care (at paragraph 29). The Appellant was now 76 years of age and her condition was a worsening one.

Error of Law

11. I am satisfied that the making of the decision by the judge did involve the making of an error on a point of law, such that the decision falls to be set aside. My reasons are as follows.

12. First, the judge accepted that the Appellant suffered from the conditions described (paragraph 27).

13. Second, with respect to the Appellant the judge "had regard to the letter from the hospital where she currently receives treatment" and went onto say that, " I therefore accept that she needs such care" (paragraph 29).

14. Third, however, the judge did not accept that "such care is unavailable or unaffordable" (paragraph 30). In doing so, the judge did not give full consideration to the guidance in **Britcits [2017] EWCA Civ 369** where the Court of Appeal (at paragraph 59) discussed the requirement of the level of care, stating that "the focus is on whether the care required" for adult dependent relatives " can be 'reasonably' provided and to 'the required level' in their home country". What this meant was 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". The court was prepared to recognise that, "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 Appellant to receive in their home country". However, the fact was that, "those considerations include issues as to the accessibility and geographical location of the provision of care and the standard of care". And as such, "they are capable of embracing emotional and psychological requirements verified by expert medical evidence". In the instant case, there was expert medical evidence from both Dr Dogar and Dr Ur-Rehman and the judge did not give the necessary consideration to the Appellant's emotional and psychological requirements. With her husband having passed away in 2017, and the Appellant having resorted to making frequent visits to see her only daughter in the United Kingdom, (not to mention her grandchildren), the assessment of the Appellant's level of care could not have excluded her emotional and psychological requirements, given that she was at the age of 76.

15. Finally, the judge failed to deal with the Section 55 of the BCIA, a point which was argued before the Tribunal with respect to the Appellant's grandchildren in the United Kingdom, whom she would see when she would visit her sponsoring daughter in the UK.

Notice of Decision

16. The decision of the First-tier Tribunal Judge involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. This appeal is remitted back to the First-tier Tribunal to be determined by a judge other than Judge Broe because under Practice Statement 7.2.(b) the nature or extent of any judicial fact-finding which is necessary in order for the decision in the appeal to be remade is such that, having regard to the overriding objective in Rule 2, it is appropriate to remit the case to the First-tier Tribunal. I direct that the findings in relation to the medical evidence and the long-term medical care needs of the Appellant, as made by the judge below, be preserved.

Satvinder S. Juss

Judge of the Upper Tribunal
Immigration and Asylum Chamber

29th August 2023