



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

Appeal Number: UI-2023-002175
UI-2023-002177
HU/60562/2022
HU/60561/2022

THE IMMIGRATION ACTS

**Decision & Reasons
Promulgated
On 1 September 2023**

Before

**UPPER TRIBUNAL JUDGE CANAVAN
DEPUTY UPPER TRIBUNAL JUDGE WILDING**

Between

**(1) A A
(2) L A**

(ANONYMITY DIRECTION MADE)

Appellants

And

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Ms S Anzani, Counsel, instructed by Qazi and Co Solicitors
For the Respondent: Mr N Wain, Senior Home Office Presenting Officer

Heard at Field House on 27 July 2023

Order Regarding Anonymity

Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellants are granted anonymity because the case involves consideration of matters that might touch protection issues. No-one shall publish or reveal any information, including the name or address of the appellants, likely to lead members of the public to identify the appellants. Failure to comply with this order could amount to a contempt of court.

DECISION AND REASONS

1. The appellants appeal against the decision of First-tier Tribunal Judge Courtney ('the Judge') who dismissed their appeals against the Entry Clearance Officer's ('ECO') decisions refusing them entry clearance.

Background

2. The appellants are nationals of Afghanistan born on 6 September 1964 and 26 October 1969 respectively, and are husband and wife. They applied on 1 July 2022 as for entry clearance as the adult dependent relatives of their son, Mr Abdul Haseeb Azizi, ('the Sponsor') who is a British Citizen.
3. The ECO refused the application on the basis that the appellants had not shown that either of the appellant's required long term personal care, or that there was no one else in Afghanistan who could reasonably provide the care required. As such did not meet the requirements of E-ECDR.2.4 - 2.5. of the Immigration Rules ('the Rules').
4. The ECO considered that overall the refusal was a proportionate interference with the appellants' Article 8 rights, and as such refused the application.
5. The Judge considered the appellants' evidence and submissions and made the following findings in relation to the Rules:
 - (i) The appellants were related as claimed to the sponsor.
 - (ii) The Rules could not be met because the evidence provided does not show that the medical conditions and treatment that the appellants have are ones requiring long term personal care. In particular the second appellant underwent eye surgery in 2021 and there was no clinical evidence to suggest that it had not given her a good visual outcome.
 - (iii) There was brief reference in the voluminous medical evidence to the second appellant suffering from "nervous disorders epilepsy". The Judge noted that the witness statements identified her suffering from depression and anxiety but that no psychiatric evidence had been supplied and no evidence she was taking antidepressant medication. The Judge was not prepared to accept that she suffers from any significant nervous disorders or epilepsy.
 - (iv) Whilst the first appellant suffered from generalised reduced bone density in his lumbar spine, mild degenerative changes in his spine with diffuse posterior bulge and annular tears and mucoid degenerative changes in his left knee joint, the Judge was unclear from the evidence what impact these health conditions had on his day

to day life. None of the medical letters proffered an opinion on this, no care programme had been supplied and it was unclear what treatment the first appellant may required.

(v) The couple were physically able to travel to Pakistan in 2022 for TB tests and biometrics.

(vi) The Judge noted:

'25. In cross-examination the Sponsor said that his parents could cook for themselves, but claimed they could only prepare "eggs and tea". In her witness statement the Second Appellant states: "Due to my illnesses, there are many occasions whereby I am bedbound and I cannot even get up to prepare meal for myself or my husband. On some occasions, I and my husband cannot go to a nearby shop to get daily stuff due to our illnesses" [§9]. There is no medical evidence to support the claim that Mrs Azizi is often confined to bed by her medical problems. In any event, it is unclear why Mr Azizi might be prevented from doing the shopping or preparing a meal for himself and his wife.'

(vii) The Judge found that there was insufficient evidence to show that the appellants met the requirements of paragraph E-ECDR.2.4 of Appendix FM of the immigration rules.

6. Turning to the case outside of the immigration rules under Article 8, the Judge found the appellants and sponsor do have more than the normal emotional ties. However in relation to the overall proportionality the Judge found:

'35. In his evidence-in-chief the Sponsor said that his parents had left the family home and were in hiding in another part of Kabul. This was because his sister [M]'s husband had worked for the British Forces in Afghanistan and the family had been targeted for reprisals. [M] and her husband had come to the UK two years ago and were now living in Birmingham. It has not been disputed by the Respondent that the couple were evacuated from Afghanistan during Operation Pitting in August 2021, and I accept this to have been the case. However, the First Appellant stated in his application form (completed in July 2022) that he had lived at the address provided - for the past 54 years. The Sponsor confirmed that this was his parents' house and that it had been in the family for 70 years. Mr Williams noted that neither the Sponsor nor his parents had mentioned in their witness statements that the Appellants were in hiding in Afghanistan. Taxed with this the Sponsor replied: "When I went to my Solicitor it couldn't all be written in the witness statement. If I was to explain it all it would have been ten or eleven pages and the Solicitor said: 'In court you can describe everything and say everything'". I do not find this a convincing explanation for such a significant omission, and I consider that the Sponsor's suggestion that his parents are in hiding is a belated embellishment of their claim, designed to bolster their appeal. I do not accept that the Appellants are vulnerable because they have been forced to leave their home in fear of the Taliban.

36. *The CPIN Afghanistan: Medical treatment and healthcare (October 2021) notes a Reuters report that Afghanistan's already fragile health system was "at risk of collapse" after foreign donors stopped providing aid following the Taliban takeover [§3.2.1]. Hundreds of healthcare clinics across the country had closed [§3.2.5]. Dozens of local and foreign medical consultants, who had been working at various public and private health facilities in Kabul and other provinces, had fled the country [§3.2.7]. Kabul and other parts of Afghanistan were facing "an extreme shortage of medicines", which were not coming to the country from Pakistan and India following the change of government as borders were closed and trade was suspended. Dr Ahmed Waleed, a consultant haematologist, said that "many other medicines including third generation antibiotics, drugs for the treatment of metabolic disorders, neurological conditions, heart ailments, as well as those for the treatment of diseases of women and children were also not available" [§3.3.4]. In their skeleton argument the Appellants' representatives contend that "the medical and mental health provisions they require are unavailable or inaccessible in the war-torn country in Afghanistan". However, no care programme has been supplied, and it is unclear as to what medication and other treatment will be required by the Appellants in the future.*

37. *The Appellants' representatives state that their clients will need to travel to Pakistan for medication and treatment (although it has not, in my view, been established that their needs cannot be met in Afghanistan). They say that most airlines have cancelled their flights to and from Afghanistan and assert that it is dangerous to travel by car to Pakistan. However, the Appellants were able to visit Pakistan by taxi in July 2022. The grounds of appeal state: "The only Countries that the appellant can hardly travel is Pakistan and Iran. Since the Taliban have taken control of Afghanistan, it has become impossible to obtain Pakistan or Iran Visas. There are agents charging between \$3000 to £5000 dollars to obtain Pakistan Visa. In addition, it is extremely risky to travel to Pakistan from Afghanistan at current climate". In oral evidence the Sponsor said that he had paid \$2,000 for each of his parents in order to secure their visas in June 2022. He contended that "all the embassies are closed", but there is no objective background evidence in the bundle to substantiate this. No independent evidence has been supplied which confirms that the Appellants will be unable to renew their visas for Pakistan when they expire in June of this year.*

38. *I have taken account of the fact that the Appellant's son cannot sensibly return to live in Afghanistan. Having said that, the Sponsor initially made the choice to leave his parents and move to the UK. The refusal maintains the status quo.*

39. *The Appellants would be able to continue their ties with family members in the UK via modern means of communication. I appreciate that that is not the same as day-to-day contact in person, but the courts have regarded this as having some value in some cases: see for example LWF v SSHD [2014] CSIH 77. The Appellants' representatives state that the Sponsor can no longer travel to Afghanistan to provide emotional and physical support to his parents due to the current security situation in Afghanistan. It is a matter of public record that the UK FCO currently advises against all travel*

to Afghanistan. However, there is no reason to believe that they could not meet in a safe third country such as Pakistan. I acknowledge that travel to Pakistan for the family members in the UK will be costly and involve travelling a significant distance, so that visits may not be frequent. The couple have a viable option of applying for visit visas to the UK, although whether they would have real prospects of success is not a matter for me: see SB (Bangladesh) [2007] EWCA Civ 28.

40. The two Appellants have been together for over 36 years and can reasonably be expected to provide one another with emotional support. They are living in Kabul in the family home. The Sponsor gave evidence that two of his sisters have moved to Iran but that one has remained in Afghanistan. He said that she lives 19 hours away from his parents. It has not been suggested that the Appellants could not move to live near to this daughter in order to enjoy emotional support from the younger generation.

41. In my judgment it has not been established that a refusal to allow the Appellants to enter the UK would result in unjustifiably harsh consequences for them, and accordingly there are no exceptional circumstances in this case.'

Grounds of appeal

7. The appellant appealed against this decision identifying three grounds of appeal:
 - (i) The Judge failed to provide sufficient reasons for finding that the appellants' needs could not be met in Afghanistan. Given the background material the Judge gave no reasons, or no adequate reasons, for finding that their healthcare needs could be met in Afghanistan.
 - (ii) The Judge failed to consider material in the public domain in relation to the country conditions in Afghanistan. In particular the Judge failed to explain why the FCO guidance warning against all travel to Afghanistan was not taken into account. This was particularly important because the Judge failed to consider the fact that there was no British consular officials in Afghanistan when considering whether the appellants could renew their visit visas for Pakistan.
 - (iii) The Judge made an unreasonable finding in relation to the claim that the appellants are in hiding in Afghanistan in light of the accepted evidence that the appellant's daughter and son in law had worked for the British in Afghanistan and had been evacuated.
8. Permission was granted by First-tier Tribunal Judge Austin on 20 June 2023 on all grounds.

The hearing

9. We heard submissions from both representatives, we are grateful for their written and oral arguments.

Documents

10. As well as the relevant documentation in relation to this appeal, we have also been provided with the appellants' bundles before the FTT, as well as the respondent's bundles of evidence. We have carefully considered the documentary evidence that was before the Judge in considering this appeal.

Findings and reasons

11. We do not consider that the Judge materially erred in law for the reasons advanced. We consider that this appeal, whilst clearly one attracting sympathy with the circumstances that the appellants have found themselves in, is ultimately one of disagreement with the Judge's conclusions rather than identifying any material error of law in her approach.
12. The Judge had a reasonably voluminous amount of medical documentation, but Ms Anzani has not taken us to any particular document which cause us to doubt that the Judge has misidentified or misunderstood the appellants' respective medical needs. The Judge set out fully the medical conditions of the appellants, and found that the evidence did not show how these various conditions were such that they required long term care. The Judge's findings in relation to the medical evidence were plainly open to her to come to; indeed as already highlighted, the appellants were unable to take us to any document which outlined the long term care they needed, or that the Judge had misunderstood the medical conditions to such a degree that her summary of them was erroneous.
13. The grounds go on to challenge the Judge's approach to the needs being met in Afghanistan, and that given the collapse of the State the Judge has failed to consider how their needs could be met in Afghanistan, when they themselves have been addressing their needs by travelling to Pakistan.
14. Insofar as this is a challenge to the dismissal of the appeal under the immigration rules, this submission does not identify a material error. The Judge found necessarily that their needs did not require long term care; the Judge was clear as to that conclusion given the medical evidence relied on did not venture any medical opinions on this.
15. If the appellants' conditions are such that they do not require long term personal care, then it is immaterial whether their needs can be addressed

in Afghanistan for the purposes of the Rules. Furthermore, the lack of evidence such as a care plan or similar fortified in the Judge's view, that the treatment required was not so serious such as to show that long term personal care, on the evidence provided.

16. This ground potentially has more purchase to how the Judge considered the matter outside the immigration rules, however the Judge's conclusions on this are essentially that the status quo can continue. The overall balancing exercise has to be undertaken taking everything in the round. That necessarily includes that the appellants have to date arranged themselves to meet their various medical needs by travelling to Pakistan. The Judge's conclusion that that continuing is not disproportionate was one which she was entitled to come to having taken all of the evidence in the round. We consider that in relation to this ground when looking at the assessment outside of the rules, that the Judge was entitled to come to the conclusions she came to. The assessment is reasoned, and outlines where the balance is struck.
17. Turning to ground two, we are not satisfied that there is any error of law in failing to take into account the matters of public record vis a vis the lack of British consular services and read that over to cover Pakistani visa services in Afghanistan. We do not consider that the Judge materially erred in her assessment of the evidence. It is a question of fact, that before the Judge, the evidence showed that the appellants had valid visas for Pakistan. The appellants in essence are submitting that the Judge ought to undertake a proleptic assessment as to whether those visas will be renewed or not. Such an approach would be unwise for a Judge to do when assessing the case as at the date of the hearing.
18. Finally, we do not accept that the Judge's consideration of the evidence before her in relation to where the appellants were living is irrational. There was conflicting evidence before her, and she found in essence that if the appellants were living in hiding then they would have said so either in their visa application form or in their statements before her. That such evidence came in the form of the oral evidence of their Sponsor was something that the Judge had to reconcile, and ultimately she found against the appellant's on this point. This approach was plainly one within the reasonable range of findings she could come to, and is not a finding which is infected by irrational conclusions.
19. The impact of the withdrawal of Western forces from Afghanistan in 2021, culminating in the evacuation of Kabul in August 2021 and the significant impact this has had on the country since the Taliban returned to power is well known. We have considerable sympathy with the appellants and their UK based family members in trying to show that the refusal of entry

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clearance is disproportionate. However, our role is to consider the decision of Judge Courtney, and consider whether her decision is legally sound or not. We readily can see that a case such as this could lead to a different conclusion in the First-tier Tribunal, and that a different Judge could have come to a different conclusion. However, for the reasons identified above we do not consider that the Judge materially erred in her assessment and as such this appeal is dismissed.

Notice of Decision

The appeal is dismissed.

T.S. Wilding

Date 20th August 2023

Deputy Upper Tribunal Judge Wilding