IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003932

First-tier Tribunal No: HU/57810/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

9th November 2023

Before

UPPER TRIBUNAL JUDGE RIMINGTON
DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

GHULAM FATIMA
(NO ANONYMITY ORDER MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the Appellant: Mr M Aslam of Counsel, instructed by M-R Solicitors
For the Respondent: Mr M Parvar, Senior Home Office Presenting Officer

Heard at Field House on 25 October 2023

DECISION AND REASON

1. The appellant is a national of Pakistan born on 1 January 1945 who appeals with permission to the Upper Tribunal against a decision of the First-tier Tribunal, Judge Row, ("the judge") promulgated on 30 July 2023 dismissing the appellant's appeal on all grounds.

2. The appellant had appealed to the First-tier Tribunal against a decision of the respondent, dated 20 October 2022, refusing the appellant's application on 19 April 2022, for entry clearance to the United Kingdom as the adult dependent relative of her son, the sponsor, Mr A S Malik, a British citizen.

3. The appellant appealed to the Upper Tribunal on the grounds that it was contended:

(1) the judge erred in finding it was open to the respondent to raise claimed additional grounds for refusal in the respondent's review but not raised in the refusal of entry clearance;

(2) the judge erred in referring to the respondent's concession, that the appellant needed long term personal care, as a generous one;

(3) the judge failed to properly understand and interpret the medical evidence;

(4) the judge misrepresented written evidence from the appellant's daughter by recording, at [22], that the appellant's daughter said it was inconvenient and culturally unacceptable for her to provide care and so she refused to do so;

(5) the judge failed to take into account the appellant's mental health including that her doctor advised that care be provided by family members to alleviate symptoms of depression, it being argued that the judge failed to properly consider the appellant's emotional needs in concluding that there was no adequate care provision in Pakistan;

(6) the judge erred in failing to consider that the current care arrangements are temporary and in finding that the sponsor could relocate to Pakistan to care for his mother, the appellant.

4. At the hearing before us it emerged that although the respondent had purported to lodge a Rule 24 response on 26 September 2023 and such was marked on the electronic case management system, there was no Rule 24 attached or available to either the Upper Tribunal or the appellant's representative prior to the hearing.

5. Mr Parvar undertook to provide a further copy to the Upper Tribunal (having provided a copy to Mr Aslam) and summarised that it was agreed by the respondent that there were material errors of law in the judge's decision from [19] to [22].

6. Although we note that the Rule 24 response dated 26 September 2023, which we received after the hearing, indicated that there were 'arguable' material errors of law in the judge's findings at paragraphs [19]-[22], Mr Parvar conceded before us that such errors were material such that the decision should be set aside.

7. The judge at [19] noted that the respondent had accepted that the appellant would need long-term care to meet day-to-day care needs which the judge considered to be 'perhaps a generous concession' going on to indicate that 'painful knees would not necessarily impair a person's ability to meet their own care needs, especially when appropriate aids can be used.' The judge went on to again note that the respondent accepted that the appellant needed this care. Whilst arguably the judge's observation of a generous concession was unnecessary, particularly in the context of his clear acceptance of that concession, it was not, in itself, fatal to his subsequent consideration of the medical and other evidence.

8. However, the judge at paragraphs [20]-[22] noted that the sponsor and his siblings and their families had been staying with the appellant on a rota system but that his sister in Pakistan was unwilling to assist 'because she had her own concerns'. At [22] the judge references a letter from the sponsor's sister, which the judge records as the sponsor's sister as saying, 'that it was inconvenient for her to provide care to her mother and culturally unacceptable for her to do so'. Although the letter from the sponsor's sister references 'Pakastani culture' this is in the context of her explaining that she had moved to Lahore, approximately 1,200 km away from her mother, with her husband after her marriage. The appellant's sister goes on to explain that she has caring responsibilities for her disabled stepdaughter.

9. The judge fell into error in mischaracterising the sponsor's sister's evidence. Her evidence indicated that the distance she lived from her mother and her day-to-day caring responsibilities for her stepdaughter meant that she was not in a position to look after or frequently visit her mother. There was no reference in that evidence to it being inconvenient or culturally unacceptable for her to provide care for her mother. The judge went on to 'not accept that only the daughter who was living in Pakistan' refused to assist her mother, in the context of her siblings, all of whom lived outside of Pakistan, providing that assistance.

10. The judge's approach was in error. The judge correctly identified, at [23] that it was for the appellant to show that suitable arrangements for the appellant's care could not be made in Pakistan (regardless of who provided that care). However, the judge's errors, in misunderstanding the evidence of the appellant's sister and, again in failing to factor in or consider whether the current care arrangements were temporary, in her subsequent finding at [25] that the current arrangements of care could continue, tainted the judge's subsequent consideration and finding that care could, in the alternative, be obtained for the appellant by employing others, in Pakistan.

11. In this context, the judge failed to properly consider and reach findings in respect of the appellant's emotional needs (and there was evidence before the Tribunal including from Dr Nisa that her recovery from depression would largely depend on her continued support from her son and from Dr Zia that a family member was required) in finding that the appellant had failed to demonstrate there was no adequate care provision in Pakistan. It is not clear that the judge's approach, at paragraphs [19] to [22] did not infect the consideration of the adequacy of care provision in Pakistan.

12. Mr Parvar conceded that the judge had materially erred at [19] to [22] including in misunderstanding the evidence from the appellant's sister in Pakistan and that the judge's errors in his consideration of the factual situation in Pakistan for the appellant, rendered the judge's subsequent consideration of whether there was adequate care provision in Pakistan unsustainable, including in the judge's failure to properly consider the appellant's emotional needs.

13. In conceding that the judge erred, and that the decision should be set aside Mr Parvar submitted, relying on the respondent's Rule 24 response, that paragraphs [12] to [14] of the decision of the First-tier Tribunal be preserved.

14. Paragraphs [12] to [14] set out the judge's conclusions in respect of the argument made before the First-tier Tribunal that the respondent's refusal of entry clearance referenced only the provision of care by family members in

Pakistan, with the argument about alternative care being available only being made in the respondent's review. It was the argument of Counsel before the First-tier Tribunal that the respondent was therefore restricted to arguing only the original ground in the refusal of entry clearance in respect of the availability of family members in Pakistan.

15. Judge Row comprehensively rejected that argument and in our view was correct to do so. The refusal of entry clearance stated that it was not accepted that the appellant met the requirements for leave to enter under Appendix FM, indicating that the appellant did not meet 'the eligibility relationship requirement of paragraphs E-ECDR.2.1 to E-ECDR.2.5 and that 'I am not satisfied that you are unable to obtain the required level of care in Pakistan'. The respondent refused the appellant's application with reference therefore to E-ECDR.2.5.

16. At the date of refusal of entry clearance E-ECDR.2.5 provided as follows:

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

17. Whilst it is correct that the refusal of entry clearance concentrated on the availability of family in Pakistan, Judge Row properly rejected the argument that this limited the arguments before the First-tier Tribunal. There was no concession in the refusal of entry clearance in relation to any part of E-ECDR.2.5 and as the judge indicated, it was for the appellant to demonstrate that she met those requirements. The judge went on at [13] to note that the respondent's review had properly clarified the issues in dispute and that the respondent was not restricted to arguing that there were other family members who could provide care.

18. In addition, at [14] the judge noted that Counsel was asked whether the judge's ruling prejudiced the appellant and if so whether an adjournment was sought to produce further evidence. Counsel is recorded as not requiring an adjournment and that 'the sponsor could give evidence about the availability of other care in Pakistan'. Mr Aslam (who had also appeared below) conceded before us that this was the case. As we indicated at the hearing, the appellant's skeleton argument before the First-tier Tribunal, also set out E-ECDR.2.5 in full and considered at paragraph 13, the issue of 'arranging for carers to visit her or placing her in a care home'. No argument was made that this issue was not arguable by the respondent.

19. It is difficult to see how the judge could have erred in their approach, and Mr Aslam for the appellant quite properly did not object to paragraphs {12] to [14] being preserved.

Decision

20. The judge materially erred in law for the reasons identified. We set aside the decision pursuant to Section 12(2)(a) of The Tribunals Courts and Enforcement Act 2007, with paragraphs [12] to [14] of First-tier Tribunal Judge Row's decision preserved. Taking into account paragraphs 7.2 to 7.3 of the Senior President's Practice Statement 2012, in particular the nature and extent of the fact-finding

required and in accordance with **Begum (Remaking or remittal) Bangladesh [2023] UKUT 46 (IAC)** we remit the appeal to the First-tier Tribunal, other than Judge Row, it being agreed before us that it should be listed at a London hearing centre.

M M Hutchinson

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

3 November 2023