



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004033
First-tier Tribunal No:
HU/54061/2021
IA/10484/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 07 December 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE WILDING

Between
MRS BASHIR AKHTAR
(ANONYMITY ORDER NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE
HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr N Uddin, Counsel

For the Respondent: Ms S Cunha, Senior Home Office Presenting Officer

Heard at Field House on 2 November 2023

DECISION AND REASONS

1. The appellant appeals with permission against the decision of First-tier Tribunal Judge Zaher ('the Judge'), who in a decision dated 15 August 2023 dismissed her appeal against the respondent's decision to refuse her human rights claim.

Background

2. The appellant is a citizen of Pakistan born on 18 November 1944, she arrived in the UK on 19 January 2020 as a visitor. Her husband, who was 82 years old at the time of the Judge's decision. Her health was already deteriorating when she arrived in the UK, however by May 2021 she required 24-hour care. This included help with bathing, toileting, walking, preparing food, administering medication and monitoring of her blood sugar levels.
3. The appellant applied for leave to remain on human rights grounds arguing that she met the requirements of the Adult Dependent Relative ('ADR') route. She relied on the Coronavirus concession, made in policy not the immigration rules, that allowed her to switch in country without having to leave the UK.

4. The appellant has Type II Diabetes with complications including diabetic retinopathy and neuropathy which impairs vision, movement, gait and balance and severe hygiene OCD. She also suffers from depression and anxiety. Her case was that such is her ailing health that she meets the provisions of the ADR rule, she requires long term personal care and that she cannot obtain the required level of care. In the alternative she submitted that her removal would, in all the circumstances be disproportionate.
5. The case came before Judge Zahed on 15 June 2023, the appellant attended along with her adult children. They gave evidence. The Judge dismissed the appeal on the basis that:
 - a. The Judge found that she suffered from Type II Diabetes with complications including diabetic retinopathy and neuropathy which impairs vision, movement, gait and balance. The appellant also suffers from Osteomalacia (Vitamin D deficiency) and Rheumatoid Arthritis.
 - b. That there was inconsistent evidence as to the appellant's husband's ability to help care for her and little evidence of his own medical conditions preventing him from being able to care for her.
 - c. There was insufficient medical evidence to detail why the appellant is unable to look after herself or how it affects her daily life.
 - d. The only evidence as to her ability, or lack of, to care for herself comes from her doctor in Pakistan who has not seen her since January 2020.
 - e. The Judge found that her husband can care for her as he always has done, that she has needed care since 2017 and no entry clearance application was ever made despite it being said that the family could not find any carers.
 - f. There is no reason why the appellant, and her husband if necessary, could not be cared for in care home.
 - g. That whilst she may suffer from mild depression and anxiety, the Judge attributes that to her uncertain immigration status, and not any underlying medical condition.
 - h. Turning to Article 8 the Judge considered that the appellant's adult children could, if they so chose, go to Pakistan to help care for her, that was a choice for them, but that the refusal did not breach her Article 8 rights.
6. The appellant appeal, raising 4 grounds of appeal:
 - a. The Judge failed to have regard to material evidence as to her care needs in that he made no reference to her OCD, this was a critical part of the case that the Judge had overlooked.
 - b. The Judge failed to have regard to and to consider her mental health as to her ongoing care needs.
 - c. Irrationally finding that there was inconsistent evidence in relation to her use of a wheelchair and her ability to be 'able to mobilise'.
 - d. Failing to take into account her emotional and psychological needs when considering the availability of care in Pakistan; and
 - e. Failing to have regard to the best interests of her grandchildren in the UK, when concluding that her adult children could relocate to care for her.
7. Permission to appeal was granted by First-tier Tribunal Judge Freer on all grounds. In his decision he gave the following reasons:

2. The grounds argue that the Judge erred in a number of respects: 1, failing to have regard to the Appellant's care needs and did not consider her OCD; 2, ignoring evidence of the Appellant's mental health; 3, found irrationally the Appellant and a witness had been inconsistent; 4, did not have regard to the Appellant's needs when considering the availability of care in Pakistan; 5, did not consider the grandchildren's best interests in finding adults in the UK could relocate to care for her.

3. There is no reference in the decision to the Appellant having OCD, the Judge recorded her son's evidence that she has not seen any doctors in the UK, paragraph 14, although she must have seen a doctor for the report to be prepared. There were aspects of the report that the Judge appears to have overlooked and the evidence of her using a wheelchair was not inconsistent with being able to mobilise. With some hesitation I am prepared to grant permission - the evidence did show that the Appellant met the Adult Dependent Relative route but there are aspects of the Appellant's circumstances that it is arguable the Judge did not adequately address. I do not restrict the grant of permission.

4. The grounds disclose arguable errors of law and permission to appeal is granted.

Decision and reasons

8. I have carefully considered the written and oral submissions made on the appellant's behalf, as well as the submissions made by Ms Cunha on behalf of the respondent. I am satisfied that the Judge did materially err such that his decision must be set aside.
9. Despite her best efforts, Ms Cunha could not identify anywhere within the Judge's decision where he had taken into account the appellant's OCD. This was a central feature to her case, and central to her ability to undertake everyday tasks. The Judge compounded this failure by unlawfully summarising her mental health as being mild depression and anxiety caused by the uncertainty of her immigration status. Whilst that may have been a feature to her mental health it was not the end of the matter. Her claim was that her mental health meant that she could not undertake everyday tasks, the Judge failed to consider that anywhere in his decision. That is material because the Judge has failed to take into account a central feature to the appellant's case.
10. I am also concerned that there is no mention of Dr Tarar's evidence in the Judge's decision, which expressly identifies the complications that the appellant has due to her OCD. The Judge does not reference this report, and so I cannot be satisfied that he has taken it into account. Given the failure to recognise the OCD condition, I cannot be satisfied that the Judge has properly taken it into account.
11. By extension to grounds 1 and 2, I find that ground 4 is made out, because the Judge failed to properly take into account the appellant's mental health needs, he by extension failed to have regard to her emotional and psychological needs when considering the availability of care in Pakistan. As the grounds very properly accept he did not have to accept the appellant's case on this, but it was a cornerstone to the case she advanced and it was incumbent on the Judge to determine the case having taken into account all the relevant considerations.

12. I am also persuaded that in relation to ground 3 the Judge has irrationally found an inconsistency in the evidence that does not exist in relation to the appellant's ability to 'mobilise'. The appellant has not in any of her evidence advanced a case, not have her sons, that she was unable to mobilise. I agree with the submission that this finding has infected the findings of the oral evidence the Judge heard from the appellant's family members.
13. I am less persuaded that there is an error as identified in ground 5, the Judge does not find that the appellant's adult children must go to Pakistan, only that they could, if they so chose to. I do not need to go any further than make this observation because given the errors in grounds 1 - 4, I consider that there are no findings of fact that can stand. I find that Judge Zaher's decision has to be set aside completely, and that the appeal needs to be heard afresh *de novo*.
14. I have considered whether this is a case which should remain in the Upper Tribunal, however I consider that the findings of fact required are such that the case should start again in the First-tier Tribunal. I therefore remit the case.

Notice of Decision

The First-tier Tribunal's decision fell into legal error, as such this appeal is allowed. I set it aside and retain no findings of fact. The case is to be heard *de novo* in the First-tier Tribunal.

Judge T.S. Wilding

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Date: 28th November 2023