



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004328

First-tier Tribunal No: HU/00469/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

8th December 2023

Before

UPPER TRIBUNAL JUDGE O'CALLAGHAN
DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

ENTRY CLEARANCE OFFICER

Appellant

and

SOUAD ABO KAROUB
(ANONYMITY ORDER NOT MADE)

Respondent

Representation:

For the Appellant: Mr. A. Basra, Senior Home Office Presenting Officer
For the Respondent: Ms. E. Atas, Counsel instructed by Allied Law Chambers

Heard at Field House on 21 November 2023

DECISION AND REASONS

1. This is an appeal by the Entry Clearance Officer against the decision of First-tier Tribunal Judge Harrington (the "Judge") promulgated on 11 August 2023 in which she allowed Mrs. Karoub's appeal on human rights grounds.
2. For the purposes of this decision we refer to Mrs. Karoub as the Appellant and to the Entry Clearance Officer as the Respondent, reflecting their positions before the First-tier Tribunal.

3. The Appellant is a national of Syria. She applied to join her sons who are recognised refugees in the United Kingdom. The application was considered under the Adult Dependent Relative provisions of the Immigration Rules. The Entry Clearance Officer was not satisfied that the Appellant had shown that, as a result of age, illness or disability, she required long term personal care to perform everyday tasks (E-ECDR.2.4), and secondly that she was unable, with the practical and financial help of the Sponsor, to obtain the required level of care in Syria (E-ECDR.2.5).
4. The Appellant appealed against this decision. The Judge allowed the appeal in reliance on the evidence from the Sponsor and his wife, and the medical evidence, a psychiatric report.
5. Permission to appeal was granted by First-tier Tribunal Judge Athwal in a decision dated 15 September 2023 as follows:
 - “2. The grounds assert that the Judge erred in finding that the appellant requires long-term care as a result of age, illness or disability. It is not clear how the Judge, having noted that there was no recent medical evidence, was qualified to find that the appellant is unlikely to recover from her conditions and the required level of care was not available.
 3. The grounds raise an arguable material error or law.”

The hearing

6. Ms. Atas attended the hearing remotely. Six members of the Appellant’s family, including the Sponsor, were present at Field House. We heard submissions from Mr. Basra.
7. At the hearing we dismissed the appeal, upholding the decision of the First-tier Tribunal.

Error of law

8. The grounds state:
 - “1. At [18] the FTTJ notes that there is no recent medical evidence concerning the appellant’s conditions. The FTTJ states that this is not necessary in the circumstances as the appellant’s conditions are not those from which she is likely to make a recovery.
 2. It unclear how the FTTJ is qualified to make such a prognosis, particularly in light of the lack of recent medical evidence. It is therefore submitted that the FTTJ has erred in finding that the appellant requires long-term care as a result of age, illness of disability.
 3. Furthermore, in light of the lack of recent medical evidence it is submitted that the FTTJ has erred in finding that the required care is not available.”
9. The first two paragraphs relate to the Judge’s findings at [18]. We have carefully considered [18] of the decision. It states:
 - “I note that there is no up-to-date medical evidence. In some cases this would be highly significant and cast considerable doubt on the current needs. However, the Appellant’s conditions are not of a type from which a material recovery is likely and

so the absence of more recent evidence does not cast doubt on the Appellant's current condition."

10. The Judge refers only to the medical evidence when she makes a finding that "the Appellant's conditions are not of a type from which a material recovery is likely". We note that there is no reliance in this paragraph on any other evidence apart from the medical evidence.
11. There was no challenge by the Respondent to the medical evidence in the First-tier Tribunal, and there has been no challenge to the medical evidence in the grounds before us. The grounds assert that it is unclear how the Judge was qualified to make a prognosis that the Appellant's conditions were such that she was unlikely to make a material recovery.
12. The medical evidence before the Judge was dated January 2022. It takes the form of a psychiatric report from Dr. Wissam Mahasenah found in the Respondent's Upper Tribunal bundle at pages 45 to 47. He addresses the Appellant's significant mental health problems, her symptoms and the causes of those problems. He states that the Appellant "is suffering from severe mental depression, anxiety and panic attacks this has been for quite a substantial length of time". The report also states:

"I understand from her daughters-in-law that in the last few months her mental health deteriorated, and she relies on them for assistance and help of which they cannot provide anymore as they've applied to join Miss Souad's sons who have been granted asylum in the UK.

This has been of great impact in harming her mentality and having an emotional impact as she believes that she has been abandoned by her family and now there will be the further and final separation which is particularly important as her daughters-in-law had the trust and connection of which allowed them to provide care to their mother in law which can only be provided by those who are close family members and also those who are obligated to care for her physical daily requirement and needs, mental and emotional support and of which a stranger cannot provide."

"During the session, she appeared in a very poor way, under-nourished and unkempt with lack of sleep, with severe and emotional depression and anxiety.

Symptoms: Insomnia, Sweating, Trembling, Confusion, Poor concentration, Memory loss, Flashbacks, Withdrawal, Mistrust, Low mood, flat affect, poor eye contact, no appetite, weight loss, Anxiety, Tension, guarded. Urinary incontinence, usually following nightmares and talking to herself. I was informed by her daughters-in-law that she walks at night having nightmares asking for her sons and became very emotional, crying in public.

I recognise these symptoms as closer to emotional symptoms as she needs someone who understands her, and she trusts to gain confidence. She has avoidance; for instance, when we talk about her family mainly her sons in the UK, she becomes very upset as she was committed to her sons and is now relying on her daughters-in-law to look after her. I have also observed adjustment disorder, along with damage to her "core self", which is to do with ego resilience."

"It is my opinion that any progress on her mental and physical health would be reversed, and she will be in grave danger, both physically and mentally and she is on the route of an extreme psychological collapse due to the lack of emotional support brought by the strength of ties and connection that she has been missing since being separated from her sons, daughters-in-law, and family."

13. Given this evidence, we find that the Judge was lawfully entitled to find that the Appellant was not likely to make a material recovery. She was entitled to find, in the circumstances, that the absence of more up-to-date medical evidence would not make a difference, given the nature of the Appellant's illness. There has been no challenge to the Judge's acceptance of the medical evidence. Having accepted the evidence that the Appellant had severe mental health problems, and given the evidence of the nature of these problems and their cause as set out in the psychiatric report, we find that there is no error at [18]. The Judge's finding cannot be said to be perverse or irrational. [18] does not involve the making of a material error of law.
14. As we noted at the hearing, there was also no challenge to the Judge's finding at [12] that the Sponsor and his wife were honest witnesses. The Judge states at [12] that she accepts the evidence of the Sponsor and his wife. She states:

"Having considered the totality of the evidence I conclude that neither the Sponsor nor his wife were lying to me. I find that they were both honest witnesses doing their best to assist the Tribunal and that where their evidence differed it was differences of emphasis, or levels of detail, rather than true inconsistencies. In particular, the Sponsor's wife gave much more detailed evidence of the Appellant's day-to-day care needs and I find that this reflects that she was the one providing care to the Appellant up until February 2023 and does not prove or even imply that the witnesses were untruthful. As I have found them to be witnesses of truth, I accept the evidence of the Sponsor and his wife."
15. The statements of the Sponsor and his wife are found at pages 161 to 171 of the Respondent's Upper Tribunal bundle. Given that there has been no challenge to the finding that they were honest witnesses, there is no challenge to the evidence that the Appellant had, subsequent to the psychiatric report, been refused medical treatment in Syria.
16. Paragraph [3] of the grounds of appeal follows on from [1] and [2], and again refers only to the Judge's treatment of the medical evidence. We have found that the Judge has not erred in her treatment of this evidence, and it therefore follows that this ground is not made out.
17. Additionally, there is no challenge in the grounds to the Judge's findings in relation to the evidence from the Sponsor and his wife as to the Appellant's care needs. The Judge finds from [20] to [24]:

"20. I must, therefore, consider the sources of care for the Appellant. The Sponsor set out in his witness statement the difficulties with obtaining care, including the conflict related difficulties in sending money to Syria. The Respondent's challenges, in relation to the potential care for the Appellant, related to the possibility that care could be provided by:

 - (a) The extended family eg the parents of the Appellant's daughters-in-law; or
 - (b) The neighbours who are providing care currently.
21. The question under the Rules is not whether the Appellant could get some care or even most of the care she needs, the issue is whether the Appellant is able to get the required level of care.
22. I find that the Appellant requires 24hr care. In particular, she needs someone with her at all times to address her toileting / incontinence needs as she cannot be

left for any material time in soiled clothing and her toileting and incontinence are not on a predictable schedule which could be met with timed care calls.

23. Even if they were in principle willing to do so, this cannot realistically be provided by individuals who have their own lives and demands on their time (eg the neighbours, the extended family). This is demonstrated by the fact that the care that the neighbours are currently providing is insufficient because:

(a) The care is not provided every day, missing 1-2 days per week, and the Appellant needs care everyday;

(b) The care is not provided 24hr a day and the Appellant needs 24hr care.

24. As such care would have to be provided on a commercial basis. In light of the conflict and its consequences, and for the reasons set out in the Sponsor's evidence which I accept, this would not be possible.

18. We find that the Judge has not erred in her consideration of the medical evidence. She made further findings in relation to available care based on the evidence of the Sponsor and his wife. Her findings were open to her on the basis of the evidence before her. We do not find it is material, as submitted by Mr. Basra, that there was no evidence of the Appellant's care needs for the period from when the Sponsor's wife left Syria in February 2023 until the hearing in July 2023, given the nature of the Appellant's mental health conditions, and the evidence relating to her circumstances in Syria which, as we have stated above, were not challenged.
19. We find that the decision does not involve the making of a material error of law in the Judge's consideration of the medical evidence. She was entitled to find that the lack of more up-to-date medical evidence was not significant given the nature of the Appellant's mental health problems.

Notice of Decision

20. The decision of the First-tier Tribunal did not involve the making of a material error of law.
21. The decision of the First-tier Tribunal is upheld and the appeal is dismissed.

Kate Chamberlain

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
30 November 2023