



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-002694

First-tier Tribunal No: HU/54766/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 26th of November 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE WELSH

Between

MAHBOOBA SIDIQI
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Fripp of Counsel

For the Respondent: Mr Parver, Senior Home Office Presenting Officer

Heard at Field House on 8 August 2024

DECISION AND REASONS

Introduction

1. This is an appeal against a decision of First-tier Tribunal Judge Nixon (“the Judge”), promulgated on 6 April 2023. By that decision, the Judge dismissed the Appellant’s appeal against the decision of the Secretary of State to refuse her human rights claim.

Factual background

2. The Appellant is a national of Afghanistan currently residing in Pakistan. She applied for entry clearance on the basis of her family life, the sponsor being her son-in-law.

The decision of the Judge

3. The Judge dismissed the appeal, finding that:
- (1) the Appellant had not demonstrated that she met the requirements of the Immigration Rules because there was no evidence that the Appellant needed long-term care or, even if that were necessary, that such care was not affordable [16(1)];
 - (2) the evidence of the sponsor and the Appellant's daughter as to the care needs of the sponsor was not credible [16(2)]; and
 - (3) the Appellant had not demonstrated that she enjoys family life with her daughter and the sponsor.

Grounds of appeal and grant of permission

4. The grounds of appeal plead that the Judge erred:
- (1) in failing to give adequate reasons for finding that the evidence of the sponsor and the Appellant's daughter was not credible (ground 1);
 - (2) in failing to take into account relevant evidence, namely evidence (i) that the Appellant had previously lived with and being cared for by close family members and (ii) of a crackdown by the Pakistani government on Afghan asylum seekers, irrespective of whether they had a valid visa.
 - (3) In her assessment of whether family life exists between the Appellant and her family in the UK.
5. Permission was granted, on 6 June 2024, by First-tier Tribunal Judge Pickering. The grounds upon which permission was granted were not restricted.

Upper Tribunal proceedings

6. Mr Parver relied upon written response to the grounds of appeal and Mr Fripp his skeleton argument. I heard oral submissions from both advocates, to whom I am grateful.

Discussion and conclusion

7. The grounds of appeal are inter-linked and so I approach my assessment of their merits in the same way. I find, for the reasons set out below, that the grounds of appeal are made out.
8. The Judge found the evidence of the sponsor and the Appellant's daughter, as to the ability of the Appellant to carry out day-to-day tasks, to be not credible because it was not supported by the medical evidence. I note that the medical evidence was not in conflict with the description given by the witnesses of the Appellant's physical ailments, rather it was that the medical evidence was silent as to the effect these ailments would have on the ability of the Appellant to carry out day-to-day tasks.
9. However, in reaching her conclusion on credibility, the Judge failed to take into account the following material factors:
- (1) Those aspects of the evidence which demonstrated that the witnesses were prepared to give evidence adverse to the Appellant's case. For example, they stated that a visa extension permitting the Appellant to remain in Pakistan for

a further six months had been secured. If the witnesses had wished to embellish their evidence, it is a fact that could have been denied.

- (2) The Judge appears to have accepted the Appellant had been dependent upon another family member [16(6)] until that family member's departure from Pakistan. If so, this supported the account of the sponsor and the Appellant's daughter that their mother required the personal care of family members.
10. In relation to the existence of family life, the first reason cited by the Judge was that the Appellant had not seen the sponsor and her daughter for between five and seven years. Whilst the extent of such contact was capable of being a relevant consideration, the Judge failed to consider the evidence explaining why there had been no such contact, such as the feasibility of visits to Afghanistan and the evidence of the sponsor that he and his wife had work and childcare commitments.
11. The second reason cited by the Judge was that there was "no evidence of communication, regular or otherwise between the Appellant and her daughter" [16(6)]. However, when summarising the Appellant's case, the Judge noted that the evidence was that the Appellant and her daughter communicated daily via WhatsApp. If this evidence was taken into account, then no reasons were given for not accepting it.
12. The evidence relating to the precarious position of Afghani nationals living in Pakistan, irrespective of whether they hold a visa, was evidence relevant to the proportionality assessment. Given my conclusions in relation to the Judge's approach to the assessment of whether family life exists, it follows that this is material evidence that was not taken into account.

Notice of Decision

13. The decision of the First-tier Tribunal involved the making of a material error on a point of law and so I set aside the decision.

Remittal

14. I conclude that the appropriate forum for the remaking of this decision is the First-tier Tribunal, not to be listed before Judge Nixon, with no findings of fact preserved. In reaching this conclusion, I apply paragraph 7.2 of the Senior President's Practice Statement and the guidance in Begum (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC).

C E Welsh
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

23 November 2024