



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004466

First-tier Tribunal No: HU/01894/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 12th of January 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

Bibi Sabar Ali Shifa
(NO ANONYMITY ORDER MADE)

Appellant

and

Entry Clearance Officer

Respondent

Representation:

For the Appellant: Mr M Khan, Legal Representative

For the Respondent: Ms R Arif, Senior Home Office Presenting Officer

Heard at the Birmingham Civil Justice Centre on 21 November 2023

DECISION AND REASONS

Introduction

1. This is my decision that I delivered orally at the hearing. I do not make an anonymity order because none has been sought and in any event the principle of open justice means that I make no anonymity order.
2. The matter comes before me pursuant to permission to appeal having been granted against the decision of First-tier Tribunal Judge Row (“the judge”) sitting at Birmingham on 10th July 2023.
3. The Appellant had applied for entry clearance on the basis of her being an adult dependent relative of her son who is a British citizen and lives here in the UK. The application and the appeal had been dismissed on the basis of both the Adult Dependent Relative Immigration Rule but also on the basis of Article 8 European Court of Human Rights.

Respondent's Decision

4. The basis of the Appellant's appeal against the decision of the Entry Clearance Officer was that she, a citizen of Afghanistan, had been living as a refugee in Pakistan and that she had provided medical evidence to show that her circumstances were such that she had to come to the United Kingdom.
5. The Respondent had refused the application and, in the decision, refusing the application had said as follows.

"Eligibility

Under paragraph EC-DR.1.1.(d), you do not meet all the eligibility requirements of Section E-ECDR of Appendix FM for the following reasons:

You have applied for entry clearance to join your son in the UK as an Adult Dependent Relative. To qualify for entry clearance as an Adult Dependent Relative, the Immigration Rules state the following:

E-ECDR.2.4. The applicant or, if the applicant or their partner are the sponsor's parents or grandparents, the applicant's partner, must as a result of age, illness or disability require long-term personal care to perform everyday tasks.

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.

You are 68 years of age on the date of application. You state in your Appendix 1 that you are unable to care for yourself on a daily basis as you are elderly and fragile. You have not named any specific medical conditions, however you state that you suffer from heart problems and distress ..."

The Medical Evidence

6. The Appellant had provided medical evidence which was considered by the judge. That appears in the composite bundle at pages 87 and 88. At page 87, Dr Naseem Chaudhury states in part as follows:

"Bibi Sabar Ali Shifa was evaluated today. History and information was obtained from patient as well as her family including her son Mr. Ali Khan Shiri. Patient was diagnosed suffering from Dementia (moderate), Major Depression, along with Anxiety, sleep related agitation and multiple medical problems."

7. At page 88 there is a medical report from Dr Nawazish and he says in part as follows.

“Bibi Sabar is my patient she has a high blood pressure from past many months now. It is not controlling as giving beta blockers and diuretics drugs also as she has now, she developed vertigo with lack of sleep as she is diagnosed as patient of depression also, so I prescribed for her anti-depressant drugs also but with no result, she had to be with her SON ALI KHAN for further medical treatment ...”

8. It has to be said this is not the clearest of medical evidence however this was medical evidence which was provided to the judge. The judge’s assessment of it appears in the decision at paragraphs 13 to 21. The judge considered Dr Nawazish’s letter and Professor Tareen’s letter and it is said that Dr Chaudhury’s letter was also considered. There was reference to the Appellant having various symptoms, including dementia, major depression and anxiety.

The Hearing Before Me.

9. Mr Khan on behalf of the Appellant made oral submissions today and he had drafted the grounds of appeal. I hope it is not overly critical of me for me to highlight that the way in which the grounds of appeal were drafted without paragraph numbers, without subheadings and without identifying individual errors of law certainly caused me difficulty in following what was being contended. With some further consideration and probing and with the further oral submissions, the grounds of appeal were further refined.
10. Mr Khan’s strongest ground of appeal was said to be that the judge did not appropriately consider the medical evidence and the judge permitted himself to be distracted by the background material in respect of the availability of false documentation or unreliable documentation in Pakistan. Mr Khan states that the Entry Clearance Officer’s decision did not challenge the authenticity or reliability of the medical evidence and it was not an issue that was raised during the hearing. The judge states in his decision that Dr Chaudhury’s evidence contradicts Dr Nawazish’s evidence. Mr Khan says this is simply not right because there was a period of nine months between the two different examinations and diagnoses and the physical ailments in the main match each other, the additional aspect was in respect of the diagnosis of dementia. Mr Khan says this is a woman of older years and it is quite natural, unfortunately, for people to develop other illnesses.
11. I take into account the very clear and helpful submissions made on behalf of the Respondent by Ms Arif and I also take into account the Rule 24 Reply. Ms Arif said that the grounds of appeal amounted to disagreement with the judge’s decision and that does not equate to being an error of law and that I should thereby uphold the determination.
12. Ms Arif said that the judge was entitled to find the evidence was unreliable for the reasons set out at paragraphs 17 to 21 of the judge’s determination. There was no requirement for the judge or the Respondent to state that the documents were fraudulent and judge was entitled to place the necessary weight on this case with **Tanveer Ahmed** in mind. At paragraphs 17 to 21 the judge said that the documents could not be relied upon. The doctors had written the reports with information from the family. Ms Arif said that it would have been easier if the grounds of appeal were properly numbered, but there was a section in which it

was said that the doctor had obtained the information from the family. There appeared to be no reference or corroborative sources, such as medical history. The judge was entitled to conclude that the medical evidence was unreliable. The original letter was not produced.

Decision and Analysis

13. I conclude that there is an identified material error of law in respect of the 'medical evidence' ground of appeal. The difficulty being that the judge had before him two previous medical reports, short as they were, which set out the Appellant's ailments and difficulties and now the judge had a third updating medical report relating to dementia. I have observed already the unusual way in which those reports have been set out but nonetheless, it was incumbent upon the judge to deal with the evidence in a way in which was fair to both parties, including to the Appellant.
14. If the judge had the concerns of the type which he had set out at paragraph 21 of his decision, then those concerns should have been raised at the hearing. Then in those circumstances, Mr Khan would have been able to respond and to make his submissions in relation to the veracity or otherwise of other documents. I make clear I am aware of the decision in **Tanveer Ahmed**, but in my judgment the judge's failure to raise his concerns at the hearing meant that the unfairness thereby arose because the Appellant was not given an opportunity to deal with those concerns.
15. It is not for me to decide what may or may not ultimately be accepted as reliable evidence but it is right to say that Mr Khan has sought to rely on some further evidence today, including updates in relation to the ability of Afghans to remain in Pakistan. Mr Khan has made clear that this is the first appeal that he has undertaken at the Upper Tribunal and so was frank enough to say that he did not know whether further evidence would be admitted or not.
16. In my judgment, because this is an error of law hearing and because no application has been made for the admission of new evidence or documentation, then there is no basis for me to admit the new evidence. I do not take the new evidence into account at this error of law hearing.
17. In respect of the error of law matter though, I conclude for the reasons that I have outlined that a material error of law has been shown. I have noted that perhaps the confusion a little later within the judge's decision that the Appellant is a citizen of Pakistan may have also contributed to the judge's error in assessment of the claim. The Appellant is a citizen of Afghanistan living in Pakistan. She is not a citizen of Pakistan. Therefore the suggestion by the judge that the Appellant's British family could go to Pakistan may not therefore be as easy as perhaps it would be if the Appellant was a citizen of Pakistan. I make no finding in respect of this or any other matter though.
18. Having reflected on the submissions, I set aside the decision of the First-tier Tribunal. I apply **AEB [2022] EWCA Civ 1512 and Begum (Remaking or remittal) Bangladesh [2023] UKUT 00046 (IAC)**, and I carefully consider whether to retain the matter for remaking in the Upper Tribunal in line with the general principle set out in Paragraph 7 of the Senior President's Practice

Statement. I take into account the history of this case, the nature and extent of the findings to be made and that this appeal requires assessment of the Appellant's evidence. In considering paragraph 7.1 and 7.2 of the Senior President's Practice Statement there has to be a re-assessment of the Appellant's claim as a whole, I conclude that fairness requires that there be a re-hearing at the First-tier Tribunal and that the Appellant be afforded the opportunity of having her appeal heard by the First-tier Tribunal.

Notice of Decision

The decision of the First-tier Tribunal contains a material error of law and is set aside.

None of the findings of the First-tier Tribunal shall stand.

The matter is remitted to the First-tier Tribunal for re-hearing.

No Anonymity order is made.

Abid Mahmood
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

21 November

2023