IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-005203
UI-2023-005204

First-tier Tribunal No: HU/55512/2022
HU/55511/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

25th January 2024

Before

UPPER TRIBUNAL JUDGE LINDSLEY

Between

MOHAMAD YASIN MAHSOOR (1)
HAMIDA NOOR AHMAD (2)
(NO ANONYMITY ORDER MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the Appellant: Ms E Daykin, of Counsel, instructed by Ata & Co Solicitors
For the Respondent: Mr T Lindsay, Senior Home Office Presenting Officer

Heard at Field House on 23 January 2024

DECISION AND REASONS

Introduction

1. The appellants are citizens of Afghanistan who are approximately 74 and 69 years old. They are currently living in Turkey on temporary visas. On 10th January 2022 they applied to join their son, Ahmad Zia Shahreyar, a British citizen, in the UK as his dependent relatives. They were refused on 27th July 2022 on the basis that they could not meet the Immigration Rules under Appendix FM. Their human rights appeal against the

decisions was dismissed by First-tier Tribunal Judge Richard Wood after a hearing on 6th June 2023.

2. Permission to appeal was granted by Judge of the First-tier Tribunal LJ Murray on 20th November 2023 on the basis that it was arguable that the First-tier judge had erred in law in failing to take into account material evidence, particularly the precarious status of the appellants in Turkey, and in making a mistake of fact with respect to a metal plate which is in the first appellant's leg not arm when both considering the appeal by reference to the family life Immigration Rules and when considering the appeal more generally under Article 8 ECHR.

3. The matter came before me to determine whether the First-tier Tribunal had erred in law, and if so whether any such error is material and whether the decision of the First-tier Tribunal should be set aside.

Submissions – Error of Law

4. In the grounds of appeal and in oral submissions from Ms Daykin it is contend for the appellant, in short summary, as follows.

5. Firstly, it is argued, that the First-tier Tribunal erred because at paragraph 15(page5) the First-tier Tribunal refers to a metal plate in the first appellant's arm. It is argued that this led to the Judge to wrongly conclude that this appellant did not have mobility problems and did not have care needs for every day tasks, although the second appellant was found to have these, and this in turn, it is argued, led to the erroneous conclusion that the first appellant could care for the second appellant and thus that they did not meet E-ECDR2.3 and 2.4 as their care needs could be met in Turkey.

6. Secondly, it is argued, that the First-tier Tribunal erred because the Tribunal failed to consider the need for care provided within the context of emotional and psychological support by a relative with whom they have an existing bond, based on *BritCits v SSHD* [2017] EWCA Civ 368 at [59], as there is no reasoning on this point in the decision of the First-tier Tribunal, and all the reasoning is based on the fact that practical care could be obtained in Turkey. Ms Daykin argued that the current carer in Turkey, MK, was also not always available, as per the evidence of the sponsor, and that this had not been considered. Mr Lindsay objected to this extension of the grounds being argued, but on consideration I granted permission for this point to be argued as Mr Lindsay accepted he was in a position to deal with it.

7. Thirdly, it is argued, that the First-tier Tribunal erred because the First-tier Tribunal found that there was a family life bond between the appellants and sponsor but did not engage with material evidence that the sponsor could not spend more than very limited time in Turkey and so there would be virtually no face to face contact if the appellants were not granted entry to the UK, a factor material to the proportionality decision under Article 8 ECHR.

8. Fourthly, it is argued, that the First-tier Tribunal erred in law because the appellants' residence permits in Turkey expired in September 2023, and there was objective evidence before the First-tier Tribunal that Turkey was expelling Afghans to their country which was said not to exist at paragraph 6 (p.11) of the decision. This was a failure to consider material evidence. Ms Daykin argued that there was material in the supplementary bundle that had been before the First-tier Tribunal, that was also referred to the skeleton argument, which showed that Afghans who were temporarily resident in Turkey might be expelled.

9. Mr Lindsay accepted that there was a factual error in the decision whereby it had been recorded that the first appellant had broken an arm rather than a leg. He argued however that this was not ultimately material, as ultimately even if both appellants needed long-term personal care to perform everyday tasks there was an appropriate level of care reasonably available in Turkey. The decision of the First-tier Tribunal was not just based on the availability of Ms Mariah Khanom but on the fact that the sponsor had not shown he was not generally able to employ suitable carers in Turkey.

10. Mr Lindsay argued that there was no subjective, or personal, evidence going to the appellants' precarious status in Turkey. He argued that evidence on their immigration status would have had to be provided in an appropriate expert report as it was a matter of foreign law, and this was not done. He argued that the country of origin materials, or objective evidence did not say anything about these particular appellants as it was general evidence about the expulsion of Afghans who did not appear to be in the same position as these appellants who were present with temporary permits and were old and unwell.

11. At the end of the hearing I informed the parties that I did not find that the First-tier Tribunal had erred materially in law and so upheld the First-tier Tribunal decision. I did not give an oral judgement but set out my reasoning below.

Conclusions – Error of Law

12. The appeal was consider by reference to the adult dependent Immigration Rules at paragraph E-ECDR 2.4 and 2.5 and under Article 8 ECHR more generally. As set out in the grounds of appeal there is a citation from *BritCits v SSHD* about the potential for emotional and psychological elements of care to be relevant.

13. It is unfortunate that the decision of the First-tier Tribunal has very strange numbering of the paragraphs, with paragraphs on the 4th page being 7,8,41 and 9, and then the numbers running up to 36 before starting again at 1 in the section Article 8 Rights Outside the Rules. It might be that paragraph 41 has been lifted from another decision as it refers to Iraq, a country which is not relevant to this decision. Whilst

this lack of care is highly regrettable I do not find that is amounts to an error of law so that the decision should be set aside.

14. In the first paragraph 15 of the decision there is reference to a fracture of the first appellant's arm 15 years ago which was repaired with a metal plate. I find that this is an error of fact as the evidence at page 33 of the appellant's bundle from Sirin Gulsever from the private Ankara hospital Medical Park is that he has a metal plate in his thigh used to stabilize a femur fracture and that he suffers pain and complications as a result of needing this removed. Failure to consider this evidence accurately is an error of law, because at paragraph 29 it is found that the first appellant does not satisfy the requirements at E-ECDR 2.4 because his most significant condition is his being partially sighted, and that he does not have a restriction on his mobility as set out at paragraph 35, and there is therefore a failure to consider material evidence which could have meant that the first appellant met the requirements of the paragraph of the Immigration Rules as a person who needs long-term personal care to perform everyday tasks, and further it would potentially mean that he could not be the person to provide care to the second appellant, his wife.

15. However I find that this error is not ultimately material because I find that the findings at paragraphs 33 and 34 of the decision, that the appellants can access adequate care, currently as provided by Ms Mariah Khanom and through other suitable persons, are not flawed. There was no expert medical evidence before the First-tier Tribunal, as per the requirement in *BritCits v SSHD*, that the appellants require this care from a relative due to a need for emotional and psychological support, so I find that this factor has not be improperly omitted from consideration by the First-tier Tribunal. It was not necessary to consider the evidence of the sponsor that Ms Khanom might not always be available to care for the appellants because of the finding of the First-tier Tribunal that the sponsor had not conducted and evidenced research to show another suitable carer could not be employed in Turkey if she were insufficiently available given his accepted resources to pay for such a person.

16. I also do not find that there was material evidence that care from Turkish carers was not reasonably available to the appellants due to a threat of expulsion to them by the Turkish authorities. Country of origin material from human rights organisations relating to the expulsion and refusal to admit Afghan refugees at the border are to be found in the appellants' supplementary bundle that was before the First-tier Tribunal. However the appellants are not asylum seekers, they are present in Turkey with lawful temporary permits, and the only material identified before me that might relate to those Afghans lawfully in Turkey not on protection grounds is that residency permit registrations would not be accepted from foreigners for any neighbourhood with more than 20% of foreigners. There was no evidence before the First-tier Tribunal however

that this was relevant to the appellants' ability to renew their temporary residence permits.

17. It is accepted that the appellants and sponsor have a family life bond at the second paragraph 4 of the decision under the heading Article 8 Rights Outside the Rules. Consideration is given to the stability of the appellants' situation at the second paragraph 6 of the decision. It is found to be stable with no threat of expulsion, which I find to be a conclusion open to the First-tier Tribunal on the evidence before it for the reasons I have given above. I do not find that there was a failure to have regard to the desire for face to face contact between the appellants and sponsor. The sponsor's visits on several occasions are recorded at the second paragraph 4, and it was accepted that the current arrangement was challenging at paragraph 6. It was however unarguably open to the First-tier Tribunal to find that the family life ties between the appellants and sponsor were outweighed by the public interest in maintaining immigration control given their inability to demonstrate that they could meet the requirements of the Immigration Rules.

Decision:

1. The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

2. I uphold the decision of the First-tier Tribunal dismissing the appeal.

Fiona Lindsley

Judge of the Upper Tribunal
Immigration and Asylum Chamber

24th January 2024