



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: OA/16624/2013

THE IMMIGRATION ACTS

Heard at Field House

On 8th December 2014

**Determination
Promulgated**

On 16th December 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

ENTRY CLEARANCE OFFICER - ISLAMABAD

and

**SHAGUFTA AKRAM
(ANONYMITY ORDER NOT MADE)**

Appellant

Respondent

Representation:

For the Appellant: Mr P Nath, Senior Home Office Presenting Officer

For the Respondent: Mrs J Desouza of Counsel instructed by Ifrahim & Co Solicitors

DETERMINATION AND REASONS

1. The Entry Clearance Officer (ECO) appeals against the determination of Judge of the First-tier Tribunal Majid promulgated on 9th September 2014.
2. The Respondent before the Upper Tribunal was the Appellant before the First-tier Tribunal and I will refer to her as the Claimant.

3. The Claimant is a female citizen of Pakistan born 1st January 1948, who applied for entry clearance as an adult dependant relative, to enable her to settle in the United Kingdom with her son Irfan Akram (the Sponsor).
4. The application was refused on 23rd June 2013 with reference to paragraph E-ECDR2.4 and 2.5 of Appendix FM of the Immigration Rules. The ECO was not satisfied that the Claimant, as a result of age, illness or disability, required long-term personal care to perform everyday tasks, and was not satisfied that she would not be able to obtain the required level of care in Pakistan.
5. The Claimant's appeal was heard by Judge Majid (the judge) on 3rd September 2014. After hearing evidence from the Sponsor the judge allowed the appeal, under the Immigration Rules, and it would appear, also on human rights grounds.
6. The ECO applied for permission to appeal to the Upper Tribunal. In summary it was contended that the judge had not addressed the terms of the refusal decision which indicated that no evidence had been provided to show that the Claimant required long-term personal care as required by E-ECDR2.4. It was submitted that the judge had also failed to address the requirements of E-ECDR2.5, and failed to take into account the evidential requirements set out in Appendix FM-SE.
7. It was also contended that the judge had erred in his assessment of Article 8 of the 1950 European Convention on Human Rights (the 1950 Convention). It was submitted that the judge had not adequately explained why he had considered Article 8 outside the rules, and had not explained how family life was engaged between the Sponsor and the Claimant as both are adults, and family life between adults would not normally exist unless there were further elements of dependency beyond the normal emotional ties.
8. It was submitted that the judge had failed to adequately explain findings on material issues.
9. Permission to appeal was granted by Judge of the First-tier Tribunal Lever who set out in the concluding paragraph of his grant of permission;

"There are substantial concerns with this decision and the points raised by the Respondent in the application touch upon some and demonstrate that there were clearly arguable errors of law in this case."
10. The Tribunal issued directions that there should be a hearing before the Upper Tribunal to ascertain whether the First-tier Tribunal had erred in law such that the decision should be set aside.

The ECO's Submissions

11. Mr Nath relied upon the grounds contained within the application for permission to appeal. Mr Nath submitted that the judge had not

adequately explained how the requirements of E-ECDR2.4 and 2.5 were satisfied, and had incorrectly assessed Article 8.

The Claimant's Submissions

12. Mrs Desouza submitted that there was no material error of law in the determination.
13. Although it was conceded that the determination did not disclose an analysis of the relevant Immigration Rules or the evidence which indicated that the rules were satisfied, I was asked to accept that the Claimant did in fact satisfy the Immigration Rules, and that the judge had not erred in allowing the appeal under the Immigration Rules or on human rights grounds.

My Conclusions and Reasons

14. As I indicated at the hearing, the judge erred in law and the decision of the First-tier Tribunal is set aside for the following reasons.
15. The judge did not engage with the reasons for refusal of the application under the Immigration Rules. There was no satisfactory analysis of the requirements of E-ECDR2.4 and 2.5.
16. No adequate findings were made as to how the requirements of the Immigration Rules were satisfied, and no satisfactory analysis of the evidential requirements as set out in Appendix FM-SE at paragraphs 34 and 35.
17. Inadequate reasons were given for allowing the appeal under the Immigration Rules. It is not clear why the appeal was allowed under the rules. In relation to adequacy of reasoning I set out below the head note to **Budhathoki [2014] UKUT 00341 (IAC)**;

It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost.

18. I do not consider that the judge complied with the obligations set out above as to adequacy of reasons.
19. The judge erred in his consideration of Article 8, in not giving a satisfactory explanation as to why Article 8 should be considered outside the rules, and how Article 8 was engaged. Inadequate reasoning was given for allowing the appeal under Article 8, and no comprehensive balancing exercise carried out in relation to proportionality.

20. Having set aside the decision of the First-tier Tribunal Mrs Desouza suggested that it would be appropriate for the appeal to be remitted to the First-tier Tribunal, and Mr Nath agreed.
21. I decided that it was appropriate to remit to the First-tier Tribunal although I was conscious that re-making rather than remitting is the normal approach to determining appeals where an error of law is found. In deciding to remit the appeal I took into account the Senior President's Practice Statement 7.2 which states;
- 7.2 The Upper Tribunal is likely on each such occasion to proceed to re-make the decision, instead of remitting the case to the First-tier Tribunal, unless the Upper Tribunal is satisfied that;
- (a) the effect of the error has been to deprive a party before the First-tier Tribunal of a fair hearing or other opportunity for that party's case to be put to and considered by the First-tier Tribunal; or
 - (b) the nature or extent of any judicial fact-finding which is necessary in order for the decision in the appeal to be re-made is such that, having regard to the overriding objective in rule 2, it is appropriate to remit the case to the First-tier Tribunal.
22. In my view the requirements of paragraph 7.2 are met.
23. The appeal before the First-tier Tribunal will take place, unless the parties are advised in writing to the contrary, on 2nd January 2015 at 10am at the Taylor House Hearing Centre. The appeal is to be heard by a First-tier Tribunal Judge other than Judge Majid. The appeal is to be considered afresh and no findings are preserved.

Decision

The decision of the First-tier Tribunal involved the making of an error of law such that it is set aside. The appeal is allowed to the extent that it is remitted to the First-tier Tribunal.

Anonymity

The First-tier Tribunal made no anonymity direction. There was no request to the Upper Tribunal for anonymity and no anonymity order is made.

Signed

Date 8th December 2014

Deputy Upper Tribunal Judge M A Hall

**TO THE RESPONDENT
FEE AWARD**

Because the decision of the First-tier Tribunal is set aside so is the fee award. The fee award must be considered again by the First-tier Tribunal when the appeal is re-heard.

Signed

Date 8th December 2014

Deputy Upper Tribunal Judge M A Hall