



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: AA/09716/2014

THE IMMIGRATION ACTS

Heard at Field House, London
On 19 May 2015

Decision and Reasons Promulgated
On 20 May 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

ANNE FLORENCE AHMED

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the appellant: Mr N Aghayere, Freemans solicitors

For the respondent: Ms E Savage, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant is Anne Florence Ahmed, a national of Tanzania. She appealed to the First-tier Tribunal against the decision of the Secretary of State dated 31 October 2014 to refuse to grant her application for asylum and to remove her from the UK. Judge of the First-tier Tribunal Colvin dismissed the appeal on asylum, humanitarian protection and human rights grounds. The appellant now appeals with permission to this Tribunal. The appellant appealed only in relation to the human rights grounds.

2. The background to this appeal as it relates to the human rights issue is not in dispute, in summary the appellant came to the UK in June 2003 on a visit visa and claimed asylum. Her three siblings reside in the UK and her mother came here in 2011. The appellant's daughter lives in Abu Dhabi and her son, with whom she has not been in contact since 2003, lives in the Comoro Islands. The appellant lives with her sister, it is her case that she is the main carer for her mother, who lives with her brother, David, and suffers from diabetes and high blood pressure.
3. The First-tier Tribunal Judge heard oral evidence from the appellant and her brother. Following the hearing the appellant submitted a letter from the appellant's mother's GP which was before the Judge when she made her decision. The Judge said that it was accepted that the appellant did not meet the requirements of the Immigration Rules [28]. The Judge considered the appellant's circumstances and found that the claim that the appellant is her mother's carer is the only matter which might be considered as a compelling circumstance not sufficiently recognised under the Rules. The Judge found that this issue has not been specifically raised with the respondent and has therefore not been considered under the Home Office policy on carers or in relation to Article 8 more generally. The Judge considered that it would not be appropriate for her to do so and that a further application was required so that the respondent could properly consider the matter.
4. However the Judge was mistaken in this as the respondent had in fact been aware that the appellant claimed to be her mother's carer. The respondent said at paragraph 93 of the reasons for refusal letter;

"As you have failed to show that you are the sole carer of your mother and particularly as there are three other family members who could care for her, one of whom houses her in place of you, this part of your claim has been rejected".
5. It is clear that this issue had been before the respondent and the Judge erred in suggesting otherwise. The respondent had chosen not to be represented at the First-tier Tribunal hearing. In these circumstances I do not accept that the Judge was required to reconvene the hearing for submissions on the medical evidence submitted after the hearing as contended by Mr Aghayere. I do not accept his alternate contention that the Judge should have remitted the matter to the Secretary of State for consideration as the Judge was seized of the Article 8 issue. I do however accept that the Judge should have considered the medical evidence along with all of the other evidence in her assessment as to whether there were compelling circumstances not already recognised under the Rules.
6. Ms Savage submitted that if the Judge erred in her approach to the medical evidence and Article 8 this was not a material error as the GP's letter was brief and contained no detail in relation to the level of support. She submitted that the appellant had three siblings in the UK who are involved

with their mother and that the evidence indicates that the arrangement whereby the appellant provides care is one of convenience rather than there being no other care alternative. She submitted that any error is not material because it could not be shown that there are any compelling circumstances to justify the grant of leave outside the Rules.

7. Mr Aghayere submitted that any error is material because if the Judge found that the appeal could be considered outside the Rules under a freestanding Article 8 assessment the Judge would have looked at other factors such as the appellant's length of residence and could have reached a different conclusion.
8. I am satisfied that the First-tier Tribunal Judge did err in her consideration of Article 8 because she was mistaken in her conclusion that the respondent had not considered the appellant's claim to be her mother's carer. The appellant had appealed on Article 8 grounds and it was for the Judge to determine the issue conclusively. She failed to do so. I accept that this was a material error as had she engaged with the issue she could have reached a different decision.
9. I therefore set aside the decision of the First-tier Tribunal Judge in relation to the Article 8 appeal only. The decision in relation to the asylum appeal has not been challenged and still stands.

Remaking the decision

10. In terms of remaking the decision the representatives agreed that there was no dispute as to the facts. I heard submissions from Ms Savage and Mr Aghayere. Ms Savage submitted that there was no suggestion that the appellant's mother could not receive the required care if the appellant is removed from the UK. She submitted that the public interest factors to be considered in this case are that the appellant overstayed her entry visa and has not had leave to remain in the UK since she came in 2003. She referred to section 117B of the Nationality, Immigration and Asylum Act 2002 and submitted that there is no evidence to demonstrate that the appellant is financially independent as she is reliant on the financial support of her siblings. She submitted that the appellant established any private life whilst here unlawfully or with precarious immigration status. She submitted that there is no basis for the appeal to be allowed under Article 8 outside the Immigration Rules.
11. Mr Aghayere submitted that the GP's letter said that the appellant's mother would be adversely affected if she is required to leave the UK. He submitted that reasons have been put forward as to why the other siblings cannot care for the appellant's mother. He submitted that the factors in section 117B are in the appellant's favour in that she can speak English, as evidenced by the fact that she gave evidence in English at the First-tier Tribunal hearing and

she is financially independent in that she has never been dependant on the state.

Decision and reasons

12. It has not been contended that the appellant can meet the requirements of Appendix FM of the Rules. The appellant has been in the UK since 2003, a period of 12 years. In relation to private life the relevant provision of paragraph 276ADE is 276ADE (vi) which provides that where a person has been in the UK for less than 20 years must show that there would be very significant obstacles to her integration into the country where she would have to go if required to leave the UK. The appellant's asylum appeal was dismissed and I do not therefore accept that any of the issues raised therein would cause the appellant any problems upon return to Tanzania. The appellant says in her witness statement dated 23 January 2015 that she has no family left in Tanzania however in oral evidence (recorded at paragraph 7 of the First-tier Tribunal Judge's decision) she said that her mother returned to Tanzania in 2013 and stayed with her niece and nephew (the appellant's cousins) for 2-3 months. The appellant spent most of her life in Tanzania, leaving in 2003 when she was 51 years old. She has not shown that there would be very significant obstacles to her integration in Tanzania.
13. In deciding how to approach human rights and Article 8 I have considered the relevant case law including the decision of the Upper Tribunal in R (on the application of Esther Ebum Oludoyi & Ors) v Secretary of State for the Home Department (Article 8 - MM (Lebanon) and Nagre) IJR [2014] UKUT 00539 (IAC) which makes it clear that there is a need to look at the evidence to see if there is anything which has not already been adequately considered in the context of the Immigration Rules and which could lead to a successful Article 8 claim. I accept that the fact that the appellant plays a role in caring for her mother may be such a circumstance and I therefore go on to consider Article 8.
14. In considering this appeal under Article 8 I follow the five stages set out by Lord Bingham in R v SSHD ex parte Razgar [2004] UKHL 27. The appellant claims to have a family life in the UK with her siblings and mother. Her siblings are said to support her financially and she lives with her sister. The appellant plays a role in caring for her mother. Although I do not consider that the family life with her mother and siblings is much more than that of the normal emotional ties between adult siblings and their parents I accept that she has just about established a family life in the UK with her mother and siblings. The appellant submitted a letter from the celestial Church of Christ stating that she has been a member of the Church since 2003 and that she helps out there by cleaning and helping at church activities. I accept that the appellant has a private life in the UK. I accept that the appellant's removal may interfere with her family and private life in the UK. I am satisfied that such interference would have consequences of such gravity as

potentially to engage the operation of Article 8. The decision is in accordance with the law and I go on to consider whether the decision is proportionate with the respondent's legitimate aim of the enforcement of immigration control.

15. Whilst it is not disputed that the appellant has a caring role in relation to her mother there are some conflicts in the evidence as to the extent of her role. In her witness statement the appellant said that she visited her mother 'everyday almost' (paragraph 8). However the First-tier Tribunal Judge recorded that the appellant's brother said that the appellant comes to his house to care for their mother every day (paragraph 10 of the determination). It is recorded in the First-tier Tribunal Judge's determination that the appellant said that she stays with her mother three times a week. However her brother is recorded as saying that the appellant spends the night at his house about 5 times a week. The appellant said that her mother can dress herself and that the appellant cooks and bathes her mother. The appellant's brother said that the appellant speaks to their mother in Swahili and that she translates for her hospital appointments. Despite these conflicts I accept that the appellant does play a significant role in caring for her mother in the UK.
16. The letter from the appellant's mother's GP states that the ongoing medical issues the appellant's mother suffers from are type 2 diabetes, high blood pressure and osteoarthritis which restricts her mobility. He said that the appellant's mother needs help with getting around and carrying out domestic work and that she needs some help with personal care. He said that the appellant has been accompanying her to hospital and GP appointments and that the mother depends heavily on the appellant for her social and personal care. The GP said that he is of the opinion that the appellant's mother's personal and social care will be adversely affected if the appellant is removed from the UK. I accept that the appellant's mother requires some care. However there is no evidence that the appellant's mother requires 24 hour care. I also note that the appellant's brother told the First-tier Tribunal Judge that his mother returned to Tanzania in 2010, 2011 and 2012 and the appellant said that her mother returned in 2013. On each occasion she was said to have stayed there for a number of months. She clearly did not require a significant amount of care from the appellant then.
17. The appellant's mother lives with her son David. The appellant lives with her sister who she says is a nurse who works full time and has two children. She said in oral evidence in the First-tier Tribunal that her other brother lives with his partner and has children at university in Tanzania. Although Mr Aghayere submitted that the appellant's siblings cannot care for their mother this is not what the evidence indicates. The appellant's mother lives with David who, at the time of the hearing in the First-tier Tribunal was not working because of an accident although he was hoping to return to work, there is no evidence that he cannot provide his mother with some care. Although the appellant's sister is a nurse there is no evidence that she cannot

provide her mother with some care. There is no evidence that the appellant's other brother cannot provide his mother with some care. The appellant told the First-tier Tribunal Judge that the family are in the process of getting help from social services. This also will be a source of care for the appellant's mother.

18. Considering all of this evidence I do not accept that there is no other source of care available for the appellant's mother. I accept the respondent's submission that the appellant is providing the care required by her mother because it is convenient for her other siblings to allow her to do so and that it is a matter of choice and not necessity.
19. There is a letter from the appellant's own GP outlining her diagnosis of depression. However it appears that the stress of the appeal was exacerbating her depression. There is no evidence that she would not be able to access treatment for depression in Tanzania.
20. The appellant attends Church in the UK. There is no evidence that she will be unable to continue to practice her religion upon her return to Tanzania.
21. The evidence indicates that the appellant has family in Tanzania. Her brother told the First-tier Tribunal Judge that their mother's sister lives there and that he has cousins there. The appellant said that her brother's children attend University there. The appellant's brother told the First-tier Tribunal Judge that he would continue to help support the appellant if she was not in the UK.
22. I take into account the length of time the appellant has resided in the UK. However she overstayed her visit visa in 2003 and has not had leave to remain in the UK since then. Any private life she has established has therefore been established whilst she was in the UK unlawfully or her status was precarious (section 117B (4) and (5)).
23. I take into account the other factors set out in section 117B. I accept that the appellant speaks English as she gave evidence in the First-tier Tribunal in English. I accept that she is supported by her siblings and is therefore financially independent. However these issues are not determinative and none of the other factors in section 117B can be weighed in her favour.
24. I take into account the fact that the appellant cannot meet the requirements of the Immigration Rules in particular Appendix FM and paragraph 276ADE.
25. Weighing all of these factors I am satisfied that the decision to remove the appellant is proportionate to the respondent's legitimate aim of the maintenance of an effective system of immigration control for the prevention of disorder or crime or to secure the economic well-being of the country.

Conclusion:

The making of the decision of the First-tier Tribunal did involve the making of an error on point of law.

I set it aside and remake it by dismissing the appeal on human rights grounds.

Signed

Date: 19 May 2015

A Grimes
Deputy Judge of the Upper Tribunal