



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

Appeal Number: HU/26090/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 20th September 2018**

**Decision & Reasons Promulgated
On 4th October 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

**MR RONALDO SAN AGUSTIN
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER - MANILA

Respondent

Representation:

For the Appellant: Mr A Malik (Counsel) instructed by Ashfield Solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant, a national of the Philippines, appealed to the First-tier Tribunal against a decision of the Entry Clearance Officer (ECO) dated 26th October 2016 to refuse his application for entry clearance to the UK under Appendix FM of the Immigration Rules as an adult dependent relative of his mother who has indefinite leave to remain in the UK. First-tier Tribunal

Judge Pears dismissed the appeal in a decision promulgated on 16th May 2018. The Appellant now appeals to this Tribunal on the basis of permission granted by First-tier Tribunal Judge Hollingworth on 1st August 2018.

2. The background to this appeal is that the Appellant was born on 15th July 1987. The Sponsor, the Appellant's mother, left the Philippines in 1990 when the Appellant was about 3 years old to work in Singapore. She left her children with her mother and the children have no contact with their father. She came to the UK in 1997. The Appellant claims that he is single and used to live with his grandmother in her home until she died and he now lives there alone and the house is dilapidated and conditions are not good. He says that he needs emotional support from his mother. He claims to have mental health issues.
3. The First-tier Tribunal Judge considered the oral and documentary evidence at paragraphs 7 to 13. The judge set out the law and submissions at paragraphs 14 to 19 noting that the decision under the Rules relates to paragraph E-ECDR2.4 and E-ECDR2.5. The judge reached his conclusions at paragraphs 20 to 26. At paragraph 20 the judge found that the statements of the Appellant and Sponsor were repetitive and prone to exaggeration in areas such as the frequency of daily telephone calls and that all calls were accompanied by crying. The judge noted that the Appellant has not lived with his mother since he was aged 3 and has seen her infrequently for limited periods of time since then. The judge noted that the Appellant's educational history, qualifications and work history have not been mentioned and that there is no history related to any joint interests, expeditions or photographs showing any shared experience when they were together. The judge did not accept the Appellant's evidence as to whether there was family in the Philippines other than his sister and the suggestion that and was "far from convinced" that he had an accurate picture of the Appellant's circumstances.
4. At paragraph 31 the judge said:-

"The central issue is whether the Appellant as a result of age, illness or disability requires long term personal care to perform everyday tasks and I find no evidence to sustain this. He might be depressed and he might be on medication which he might be erratic in taking but the psychiatrist does not say that he requires long term personal care to perform everyday tasks and nor does the Appellant or the Sponsor in their evidence."
5. The judge considered that the Appellant had failed to show that any care he requires is not available and that there is no one in the Philippines who can reasonably provide it or that it is not affordable [23]. The judge concluded that the Appellant had not demonstrated that he met the requirements of Appendix FM of the Immigration Rules.

6. The judge went on to consider Article 8 concluding that it had not been established that there is family life within the meaning of Article 8 [25]. In any event the judge went on to consider additional factors at paragraph 26 before concluding that, whether or not there is family life between the Appellant and his mother, “the refusal of his application would not result in unjustifiably harsh consequences for the Appellant and the Sponsor such that the refusal of the application would not be proportionate”.

Error of law

7. The relevant provisions of the Immigration Rules for the purposes of this appeal are paragraphs E-ECDR2.4 and E-ECDR2.5 of Appendix FM which provide that an applicant for entry clearance as an adult dependent relative must, inter alia:-

“E-ECDR2.4. The applicant ... must as a result of age, illness or disability require long term personal care to perform everyday tasks.

E-ECDR2.5. The applicant ... 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.”

8. At the hearing before me Mr Malik summarised the grounds into four main points. His overall ground was that the judge’s assessment of the evidence was inadequate. His first point was that in the assessment of paragraph 20, where the judge assessed the evidence of contact between the Appellant and his mother, he failed to take into account what the Appellant said in his witness statement. Mr Malik referred to paragraphs 10, 11 and 22 of the witness statement which states as follows:-

“10. I am single. I have no children. I am living on my own. I used to live with my grandmother in her house and last year she died. Now I am living on my own and I have no job. Even though I live in a very small place and it’s a dilapidated house. Conditions are not good.

11. I have been very lonely and I desperately want to be with my mother. I went through a great deal following the death of my grandmother and I have been left in solitude and needs emotional support from my closest and my only family member, my mother.

12. My only sister lives in Philippines and she married and lives separately and living in a very far away province. I have no communication or connection with her. She lives with her family and she has her own responsibilities and I cannot place a burden on her to support by me.

...

22. The whole reason I made this application is because I have no one else to look after me. My mother lives in the UK and I have no relatives or Sponsor to care for me in the Philippines. I am suffering from stress and depression for years. I have been to doctors many times. Recently, I were rushed to the hospital as I suddenly felt unwell and had to be hospitalised for a few days. My mother is extremely worried as she could not be with me. I have been emotionally suffering from depression and anxiety due to the complications around my situation and I desperately need to be with my mother. I have not had a lot of happiness since we separated and the death of my grandmother.”

9. Mr Malik submitted that there is no reference to this evidence in the judge’s decision. However it is clear to me that the judge was aware of the Appellant’s evidence as noted at paragraph 9 of the decision. There the judge recorded that the Appellant has been living in the same place where he has lived since he was aged 5 and pointed out that the Appellant made no reference to an inability as a result of age, illness or disability to requiring long term personal care to perform everyday tasks. It is clear that the judge was very aware of the requirements of the Rules in relation to this matter. The paragraphs highlighted by Mr Malik do not establish that the Appellant met the requirements of paragraph E-ECDR.2.4 or E-ECDR.2.5. In my view the judge was entitled, on the basis of the evidence before him, to conclude at paragraph 20 that he did not have an accurate picture of the Appellant’s circumstances. I do not accept the contention that the judge failed to take into account all of the evidence.
10. Mr Malik contended that the judge failed to undertake an assessment of E-ECDR2.4 and E-ECDR.2.5. However in my view it is clear that the judge took into account all of the evidence before concluding at paragraph 21 that there was no evidence or insufficient evidence to point to any requirement on the part of the Appellant to long term personal care to perform everyday tasks. Mr Malik did not point to any evidence in the witness statements or oral evidence to show that he does meet these requirements.
11. At page 54 of the Appellant's bundle there is a letter from a psychiatrist dated 22nd July 2017 which states that the Appellant is suffering from clinical depression for which he receives medication. There is a further letter dated 5th May 2018 from the same psychiatrist which again states that the Appellant is suffering from clinical depression and that he does not take his medication regularly. This evidence was taken into account by the judge at paragraph 21 and none of this evidence points to the Appellant meeting the requirements of paragraph E-ECDR.2.4 as set out above.

12. The judge considered paragraph E-ECDR.2.5 at paragraph 23 of the decision but again Mr Malik was unable to point to any evidence which demonstrates satisfaction of paragraph E-ECDR.2.5 or shows that any required level of care could not be obtained in the Philippines. Mr Malik relied on the decision in **Osman v ECO Riyadh** OA/18244/2012 and submitted that cultural factors should be taken into account and submitted that an assessment of the required level of care and who may appropriately provide will depend upon the circumstances and the evidence in any given case. However, in my view in this case there is no evidence about any relevant cultural factors. The judge took account of all of the evidence in reaching his conclusion that the Appellant did not meet the requirements of Appendix FM.
13. At the hearing Mr Malik further submitted that in the conclusions at paragraph 21 the judge failed to take into account the Appellant's evidence in his witness statement at paragraphs 19 and 20. At paragraph 19 the Appellant said:-
 - “19. I hate living alone and I miss my mother. I missed my mother so much I phoned her at least over ten times a day. I am financially dependent on her and every month she sends money to me. She is doing this since she left Singapore. She is supporting me financially since 1990. She calls me almost every day and every time she calls we cry and ask her to take me with her.
 20. I do not have a job or any business in Philippines and there is no home or permanent place to stay in Philippines. I cannot support myself and need the care and attention from my mother. My mother and I are very close and emotionally we have a strong bond. Having spent so much time apart I feel it is important for us to be reunited and live with one another and I feel that the exceptional circumstances be considered.”
14. Again I do not see how the contents of the witness statement advance the Appellant's claim to meet the requirements of paragraphs E-ECDR.2.4 and 2.5 at all. Further, the judge dealt with this evidence at paragraph 20 where he considered that the evidence of the Appellant and the Sponsor as to the frequency of daily telephone calls and the assertion that they were accompanied by crying was an exaggeration. This was a conclusion open to the judge on the basis of the evidence before him.
15. At the hearing Mr Malik further submitted that the judge had erred in his assessment of Article 8. He submitted that there was a lack of reasoning as to why the judge found there was no family life between the Appellant and the Sponsor given that there was evidence of emotional and financial dependence and in his submission there was more than normal emotional ties between them. The judge made a proportionality assessment at paragraph 26 and in Mr Malik's submission the judge failed to take account of the skeleton argument which relied upon the case of **Singh v Secretary of State for the Home Department [2015] EWCA Civ 630**.

He pointed out that the issue of whether there is family life between the adults is fact-sensitive assessment and submitted that the judge here failed to consider the facts in this case.

16. The judge made the findings in relation to family life at paragraph 25 where the judge said; "I find that whilst he is the son of the Sponsor he is an adult who has lived separate and apart from his mother since he was 3 and I cannot find on the basis of the evidence that there is family life within the meaning of Article 8." The judge had already found at paragraph 20 that the Appellant and the Sponsor had exaggerated their evidence as to the nature of their contact. The judge had already found that he did not have an accurate picture of the Appellant's circumstances. On the basis of the evidence before him it was open to the judge to conclude that the Appellant and his mother had not established that they had family life within Article 8.
17. In relation to the alternative findings as to proportionality, the judge considered all of the evidence and all of the factors [26]. The judge took into account the fact that the Appellant did not meet the Immigration Rules. The judge also took into account that the Appellant had lived all of his life in the Philippines and was integrated in relation to its culture and language. Although the judge accepted that the Appellant had a mental health issue he said "his mental health is hardly sufficiently serious and it is perfectly apparent that he is receiving treatment and medication there for it." The judge went on to find that "whether or not there is family life between his mother and him the refusal of his application would not result in unjustifiably harsh consequences for the Appellant and the Sponsor such that the refusal of the application would not be proportionate." I find that this assessment was open to the judge on the basis of the evidence.
18. I find that the grounds have not been made out in relation to the judge's decision. The judge considered all of the evidence and reached conclusions open to him on the basis of that evidence.

Notice of Decision

The decision of the First-tier Tribunal does not contain a material error of law.

The decision of the First-tier Tribunal shall stand.

No anonymity direction is made.

Signed

Date: 28th September 2018

Deputy Upper Tribunal Judge Grimes

TO THE RESPONDENT
FEE AWARD

The appeal has been dismissed and therefore there is no fee award.

Signed

Date: 28th September 2018

Deputy Upper Tribunal Judge Grimes