Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/02105/2018**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On April 8, 2019	**On April 16, 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

MRS S S A
(NO ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Juroo, Counsel, instructed by Healys LLP
For the Respondent: Mr Avery, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, a Pakistani national, applied for entry clearance to the United Kingdom as the dependant of her son. The respondent refused her application on December 8, 2017 under Section E-ECDR of Appendix FM of the Immigration Rules.

2. The appellant appealed this decision on January 4, 2018 under section 82(1) of the Nationality, Immigration and Asylum Act 2002.

3. Her appeal came before Judge of the First-tier Tribunal Kainth on December 4, 2018 and in a decision promulgated on January 7, 2019, her appeal was refused under article 8 ECHR.

4. The appellant appealed this decision on January 30, 2019 and Judge of the First-tier Tribunal Hollingworth granted permission on February 15, 2019 finding it arguable the Judge may have erred by failing to attach sufficient weight to the medical evidence and in his assessment of relocation.

5. No anonymity direction is made.

SUBMISSIONS

6. Mr Juroo adopted the grounds of appeal and the skeleton argument that he had submitted. The Judge had erred in his approach to article 8 after finding in paragraph 11 that the appellant enjoyed family life only to later find there was no family life. There was extensive medical evidence about the appellant's medical condition which demonstrated she suffered from a psychotic condition and poor physical health. The Judge did not challenge the psychiatrist's diagnosis but he erred by failing to give the appropriate weight to her actual condition as set out in the psychiatrist's report which effectively said that part of her problems was her son was the only person who could provide the care she needed.

7. The care she needed is as set out in paragraphs 58 and 59 of Britcis v SSHD [2017] EWCA Civ 368. Whilst the decision in Ribeli v ECO [2018] EWCA Civ 611 should not be overlooked he submitted that case was distinguishable from this case because of the facts appertaining to this case.

8. The expert evidence in this case made it clear that only care from a close family member would address the appellant's situation and the only person able to provide this case was her son. In considering paragraph E-ECDR 2.5 the Judge should consider whether care was available in this country and not whether the appellant's son should go and look after the appellant in Pakistan because the provision of care only became relevant outside of the Rules under article 8 ECHR.

9. Mr Juroo further submitted the Judge's approach to article 8 was flawed. The Judge had looked at 117A and B outside the proportionality assessment when they were integral to the proportionality assessment. He submitted the Court should apply the test set out in Rhuppiah [2018] UKSC 58 because the appellant spoke English and sponsor was very well off. The Judge erred by re-examining if family/private life under article 8 was engaged because he previously accepted it was in paragraph 11 of the decision.

10. The crucial question he should have asked was whether it was reasonable to expect the sponsor to relocate to Pakistan, as per para 69 of Ribeli, to look after mother in circumstances where he has never lived in Pakistan, as he had been born in Saudi Arabia, and he had been living here in the United Kingdom since he was 18 and had British children. He submitted it was not reasonable for the sponsor to leave his wife and children to go and look after the appellant. Whilst he said he would consider looking after her, Mr Juroo submitted this was only said to keep her hopes up.

11. Mr Avery opposed the application and submitted that whilst the Judge accepted there was some limited family life this was a preliminary gateway and meant the Judge could consider a full article 8 claim. From paragraph 39 onwards he made it clear the case could not succeed under article 8 ECHR. At paragraph 24 the Judge stated he considered the evidence carefully and had regard to the fact the appellant was well enough to travel to the United Kingdom and the psychiatric report was based on what he was told by appellant and was not determinative of the appeal.

FINDINGS

12. The appellant submitted an application for entry clearance as the adult dependant of a person settled in the United Kingdom. Both the respondent and Judge identified the correct legislation to consider this appeal under was Section EC-DR of Appendix FM of the Immigration Rules. The respondent refused the application because he argued the appellant did not satisfy Section EC-DR1.1(d) which required the appellant to demonstrate she met all of the requirements of Section E-ECDR: Eligibility for entry clearance as an adult dependent relative. Reliance was placed on Appendix FM-SE (paragraph 35) which required:

> " Independent evidence that the applicant is unable, even with the practical and financial help of the sponsor in the UK, to obtain the required level of care in the country where they are living should be from:
>
> (a) a central or local health authority;
>
> (b) a local authority; or
>
> (c) a doctor or other health professional."

13. By the time the appeal came before the Tribunal, the appellant's representatives had submitted additional evidence which they argued addressed the concern raised in the decision letter. It was therefore argued the Rule was met. The medical evidence also was said to have addressed the other argument advanced by the respondent namely that privately or government funded care was available in Pakistan.

14. The Judge noted the following:

    (a) The appellant had been residing alone in Pakistan since 2008 having lived in Saudi Arabia with her husband (who died in 2007) between 1979 and 2008.

    (b) The UK sponsor (her son) had left Saudi Arabia (he was born there) in 2002 and come to the United Kingdom to attend university, graduating in 2005 and became a British citizen in 2012. He is employed by UBS Investment Bank as an Executive Director and held the position of Head of Solutions Structuring Europe.

    (c) The appellant had been able to travel to the United Kingdom most years since 2008 and had also travelled to America to visit her daughter. Her last visit to the United Kingdom was in June 2017.

(d) A psychiatric report from Dr Saleem was prepared and the author concluded that her mental health would only deteriorate, and the best option would be for her to be reunited with her children.

(e) The appellant and sponsor enjoyed a family life as defined in Razgar [2004] UKHL 00027.

(f) The Judge had regard to a witness statement provided by the appellant which outlined her physical and mental health issues and indicated she also suffered with rheumatoid and gouty arthritis, low mood, severe insomnia and tiredness.

15. Mr Juroo challenged the approach the Judge took to the report provided by Dr Saleem. Reference was made to the decision of Britcits and in particular paragraph 59 which states-

> "First, the policy intended to be implemented by the new ADR Rules, as appears from the evidence, the new ADR Rules themselves and the Guidance, and confirmed in the oral submissions of Mr Neil Sheldon, counsel for the SoS, is clear enough. It is twofold: firstly, to reduce the burden on the taxpayer for the provision of health and social care services to those ADRs whose needs can reasonably and adequately be met in their home country; and, secondly, to ensure that those ADRs whose needs can only be reasonably and adequately met in the UK are granted fully settled status and full access to the NHS and social care provided by local authorities. The latter is intended to avoid disparity between ADRs depending on their wealth and to avoid precariousness of status occasioned by changes in the financial circumstances of ADRs once settled here."

16. The Court of Appeal emphasised that the court must consider (a) whether the provision of health and social care services could reasonably and adequately be met in their home country and (b) where their needs could only be met in the United Kingdom that the appellant should be granted fully settled status and full access to the NHS and any social care available with the local authority.

17. Mr Juroo submitted that the Judge failed to recognise or place sufficient weight on the fact that the appellant's restricted physical abilities arose from her severe mental health and argued that the Judge failed to recognise Dr Saleem's opinion that the appellant's best interests were best served being cared for by her son.

18. I find the Judge was aware of Dr Saleem's opinions because the Judge recorded the same in his decision including his view that the appellant would not have access to adequate treatment for her serious mental illness in Pakistan but the Judge balanced the content of the report against the oral submissions advanced at the hearing namely that it was accepted she would be able to access psychiatric services.

19. The Judge noted the standard of services in Pakistan fell beneath those offered in the United Kingdom but that was not the test to succeed under this Rule. The correct approach is set out by the Court of Appeal in Britcis namely whether the provision

of health and social care services could reasonably and adequately be met in their home country and (b) where their needs could only be met in the United Kingdom.

20. The Court of Appeal considered the level of care available in appeals such as this in the two cases cited in paragraph 7 above and the Judge considered both cases within his decision.

21. Contrary to Mr Juroo's submission, the Judge took on board that the issue was the appellant's mental health and had regard to the guidance that had been issued after the authorities cited in paragraph 7 above. The Judge concluded in paragraph 27 of his decision that the evidence did not come remotely close to coming within the Rules with the Judge noting that the appellant had been able to visit the United Kingdom on an almost yearly basis and that it was open to the sponsor to visit the appellant in Pakistan.

22. The Judge did have regard to Mr Juroo's submission, advanced today, that she was vulnerable living alone and her condition would only worsen if the status quo remained but he concluded the report failed to engage with the fact the appellant did have other relatives, who lived nearer, who should have been factored into the assessment. I refer the parties to the Judge's assessment in paragraph 28 on this issue.

23. As the Court of Appeal stated in Briticis the first test was whether the provision of health and social care services could reasonably and adequately be met in their home country and the Judge concluded at paragraph 29 and 31 of the decision that this had not been addressed in either the report of other objective evidence.

24. Having considered the submissions advanced on ground one I am of the view that the Judge carefully approached this appeal and did consider the relevant points that arose from the evidence. The Judge did take into account what was contained in the reports and the view of the expert but ultimately concluded the provision of health and social care services could reasonably and adequately be met in their home country. He rejected the submission she could only receive health and social care in the United Kingdom.

25. The Judge considered the case outside the Immigration Rules under article 8 ECHR and the challenge, under ground two, related to the Judge's approach to proportionality.

26. In paragraph 11, the Judge accepted there was family life and whilst the Judge in paragraph 42 appears to move away from that position it is important to note that the decision does not end at that juncture because at paragraph 45 the Judge reiterated that he accepted there was family life.

27. Mr Juroo submitted the Judge considered sections 117A and 117B outside the "proportionality" assessment. He refers to the fact that the Judge dealt with this prior to considering proportionality as evidenced by his approach in paragraph 36 of the decision. I accept findings on reference to the NHS are dealt with in paragraph 37 and the Judge's assessment on proportionality commenced from paragraph 39.

28. The Judge did not say the sponsor had to leave his wife and children but merely found that he could, if he was prepared to do so, go to Pakistan or he could continue the current state of affairs as previously found.

29. As this was an entry clearance application many of the section 117B factors were not relevant and ultimately the Judge had to decide whether it was disproportionate to refuse her entry. The Judge concluded the public interest outweighed the arguments advanced and on the evidence that was a conclusion open to the Judge. A different Judge may have reached a different conclusion but that does not mean there was an error in law.

30. There was no error in law.

DECISION

31. There was no material error in law and I uphold the decision.

Signed Date 11/04/2019

Deputy Upper Tribunal Judge Alis

TO THE RESPONDENT
FEE AWARD

I do not make a fee award because I have dismissed the appeal.

Signed Date 11/04/2019

Deputy Upper Tribunal Judge Alis