Upper Tribunal
(Immigration and Asylum Chamber) Appeal Numbers: HU/08182/2017
HU/08187/2017

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 17 December 2018	**On 31 January 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVEY

Between

MOHAMMAD [L] (FIRST APPELLANT)
NARGIS [L] (SECOND APPELLANT)
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

ENTRY CLEARANCE OFFICER - UKVS SHEFFIELD

Respondent

Representation:
For the Appellants: Miss S Iengar, counsel instructed by Aston Bond Law Ltd
For the Respondent: Mr T Lindsay, Senior Presenting Officer

DECISION AND REASONS

1. The Appellants, referred to in this decision as "A1" and "A2", nationals of Pakistan, appealed against the Respondent's decisions, dated 23 June 2017, to refuse entry clearance as adult dependent relatives of their sons, the Sponsors, in the United Kingdom. Their appeals came before First-tier

Tribunal Judge Suffield-Thompson (the Judge) who dismissed their appeals on 4 April 2018. Permission to appeal was given by Upper Tribunal Judge Kekić on 1 November 2018. Essentially the grounds argue that the Judge has failed to understand and properly apply the evidence before her when assessing whether or not the position had got to the stage where they met the requirements of the Rules, and in particular to the issue of whether their care needs could be adequately and reasonably met back in Pakistan. There the issue lay with a wide-ranging number of findings which led the Judge to the conclusion that their current needs were being adequately, could be adequately met, in Pakistan, and therefore they could not succeed under the Rules.

2. Mr Lindsay, in a short but pithy argument, essentially took me to a number of paragraphs in a decision which he said showed that the substance of the problem the Appellants face was that their application was premature because they were not in the position where their needs could not be met. The medical evidence did not show with cogent evidence that those needs could not be met. Notwithstanding any errors of law the Judge may have made the appeals could never succeed. The errors, if they are errors, were not material to the outcome. In effect, even if one was to set aside the decision on a remaking, the same result would be arrived at.

3. Miss Iengar argued first, in order of presentation, that documentation was produced late in the day by the Presenting Officer, which purported to show a number of care homes available in excess of those addressed by the Sponsors, and therefore there was reason to doubt the Appellants assertions about the lack of availability of care back in Pakistan.

4. If that was the only point, the fact was that it was unfortunate the Judge did not address the documentation in the decision and give reasons why that application was refused. It did not seem to me to an entire answer that the additional information was, as the Judge expressed it, an academic issue, because quite simply it was part and parcel of the extent

to which care could be provided for both Appellants, bearing in mind their ailments and troubles.

5. By itself I would conclude that the refusal of an adjournment of late arising material demonstrated procedural unfairness but it was only a part of the whole argument. I did not consider it would make any material difference to the outcome of the appeal.

6. Of more importance, and to a degree, troubling, is the extent to which, on the medical evidence which the Judge had in relation to A1, only partly referred to by the Judge in the decision, was able to conclude that A2 was there and able to provide care for A1.

7. Whilst the Judge referred to pages 146-156 of the medical evidence, it is a noticeable omission in the decision that the Judge makes no apparent reference to page 145 in the Appellants' bundle. This was a "To Whom It May Concern" letter by Dr M Zafar Iqbal Abbasi, who addressed A2's health and, amongst other things, stated that the current prognosis was that A2 needed constant looking after, and due to her health, she was unable to carry out her daily routine. This problem in turn affected her mentally because she felt she was a burden on others. The same letter goes on to note her falling into depression and not being able to care for herself and her husband who is suffering from critical illness. The letter also noted A2 needed care with everything, for example, to be given her medication on time, to ensure she eats a healthy diet, otherwise her sugar levels went up and she becomes hyperglycaemic.

8. The effects of separation were also commented upon in terms of the impact on her and the absence of her sons, the Sponsors', grandsons and others. The omission of any consideration by the Judge apparently of that evidence is a matter of concern. It was also of concern that the Judge dealt with A1's mental health issues (AB pages 254 and 255) which identified his unfortunate medical problems of dementia, kidney issues,

lack of mobility and ability to care for himself, which was evidently on a 24 hour basis, together with the fact that he cannot be left alone because of his very short memory processes.

9. The Judge made reference to the doctor's letter and said this, "Although I accept his (A1) conditions, I also note that this letter was requested by the family specifically for these proceedings". He stated that A1 needs care with his eating, dressing, washing and medication. The Judge then seemed to dismiss the substance of the letter which was addressing A1 because there was, what may be, a factual error, which the Judge believed the doctor had got wrong. How that error, about whether or not persons were or were not going to Canada, affected the reliability of the Doctor's letter in its entirety, I do not understand. It is of particular concern that such important evidence was so lightly dismissed on a basis completely unrelated to A1's health and abilities to care for himself.

10. I concluded that these matters suggested that the Judge has simply not correctly addressed the evidence as a whole, but rather has sought to divide aspects of it and at least part of the consideration of the sufficiency of current care arrangements was on an erroneous basis. Mr Lindsay rightly pointed out, the Judge at paragraph 32 concluded that everything was alright for the time being and the status quos being maintained. However, the underlying assumption that A2 can play a significant part in all those other hours of the day, when the two helpers who come in are not there, which renders his assessment unsafe. Accordingly, I reach the conclusion that the Judge has failed to adequately address the evidence as a whole. I considered the Judge's underlying assumption that the current care needs are being met was flawed, as she has expressed herself.

11. For these reasons, therefore, I find the decision cannot stand, the Original Tribunal's decision will have to be remade. Given the absence of time which is unfortunate, the case has got to be reheard again in the First-tier Tribunal. I hope that the evidence will be properly brought up-to-date,

particularly if the Article 8 ECHR issue is being made, it may be some thought needs to be given to the point, at which it may be said, that the evidence relating to the Immigration Rules is confined to the date of application on the Immigration Rules Appendix FM claim, because it may be that it can only be got in through being part of the updated Article 8 claim.

DIRECTIONS

(1) List for hearing before the First-tier Tribunal at Newport, not before First-tier Tribunal Judge Suffield-Thompson or First-tier Tribunal Judge Frankish.

(2) No findings of fact to stand.

(3) Three witnesses.

(4) Time estimate – two hours.

(5) No interpreter required.

(6) Any further evidence to be served not later than ten working days before the date of the further hearing.

(7) Any further arguments relied upon by the parties to be submitted in writing to the IAC not later than five working days before any further hearing.

(8) No anonymity direction is made.

Signed Date 16 January 2019

Deputy Upper Tribunal Judge Davey