



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/15511/2017

THE IMMIGRATION ACTS

Heard at Field House
On 7 May 2019

Decision & Reasons Promulgated
On 28 May 2019

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

ALIA FARAG AHMED AHMED FARGAL
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr. P. Georget, Counsel instructed by Good Advice UK

For the Respondent: Mr. L. Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. By way of a decision promulgated on 4 March 2019 I set aside the decision of the First-tier Tribunal Judge. The appeal came before me to be remade.

The hearing

2. I heard oral evidence from the Appellant and from her sons, Mr. Omar [H] and Mr. Ahmed [H]. The Appellant was assisted by the interpreter, who confirmed before

proceeding that they both fully understood each other. The language spoken was Arabic. Both representatives made oral submissions. I reserved my decision.

3. I have taken into account the documents in the Respondent's bundle (to D12), the Appellant's bundle from the First-Tier Tribunal (108 pages), the Appellant's bundle prepared for the Upper Tribunal hearing (55 pages), and the skeleton argument.
4. At the outset of the hearing, Mr. Georget submitted that paragraph 276ADE(1)(vi) was not the "best rule" in the Appellant's circumstances as the focus was on her family life. I will therefore first consider family life.

Burden of proof

5. The burden of proof lies on the Appellant to show that, at the date of the hearing, the Respondent's decision is a breach of her rights, and/or those of her family, to a family and private life under Article 8 ECHR. The standard of proof is the balance of probabilities.

Findings and conclusions

6. I found the Appellant and her sons to be honest and credible witnesses. The Appellant and Omar were cross-examined. There was no cross-examination of Ahmed. They answered all questions put to them and were not evasive. Their evidence was consistent. I find that I can rely on the evidence of the Appellant and her sons.

Family life

7. It was not submitted that the Appellant could meet the requirements of Appendix FM. She cannot meet the requirements for an Adult Dependent Relative as she is already in the United Kingdom.
8. I have considered the Appellant's appeal under Article 8 in accordance with the case of Razgar [2004] UKHL 27. I have considered whether the Appellant has family life with her sons sufficient to engage the operation of Article 8. I find that the Appellant came to the United Kingdom as a visitor on 16 October 2016 with her husband. She came to visit her sons and their families. Omar is married with two sons. Ahmed is now divorced with one son. While they were in the United Kingdom, on 17 December 2016, the Appellant's husband suddenly died of a heart attack. He is buried in the United Kingdom. Ahmed gave evidence that he visits his father's grave with the Appellant between once a week and once a fortnight.
9. The Appellant has been living with her sons in the United Kingdom ever since. She spends half the week living with Omar and half with Ahmed. Given the circumstances under which she has remained in the United Kingdom following the sudden death of her husband, I find that the bonds between the Appellant and her adult sons go above and beyond the ties normally to be found between a mother and her adult sons. I find that the bonds have been strengthened due to the

circumstances of her husband's death, and the consequent shared grief. I find that the Appellant depends on her sons for emotional support. She lives with them and is maintained by them. I find that she is financially dependent on them. I find that this financial and emotional support is real, effective and committed.

10. I have considered the Appellant's grandsons. I find that the Appellant has visited her grandchildren in the United Kingdom over a number of years with her late husband, and that she now lives with them. She gave evidence that she had been to visit her sons and their families every year for a couple of months. She visited about four times. She gave evidence that she looks after her grandchildren while their parents work. She is very close to her grandchildren. I find, taking the above into account, that the Appellant has a family life with her grandchildren.
11. I find that the Appellant has a family life with her sons and their families sufficient to engage the operation of Article 8. I find that the decision would interfere with this family life.
12. Continuing the steps set out in Razgar, I find that the proposed interference would be in accordance with the law, as being a regular immigration decision taken by UKBA in accordance with the immigration rules. In terms of proportionality, the Tribunal has to strike a fair balance between the rights of the individual and the interests of the community. The public interest in this case is the preservation of orderly and fair immigration control in the interests of all citizens. Maintaining the integrity of the immigration rules is self-evidently a very important public interest. In practice, this will usually trump the qualified rights of the individual, unless the level of interference is very significant. I find that in this case, the level of interference would be significant and that it would not be proportionate.
13. In assessing the public interest, I have taken into account section 19 of the Nationality, Immigration and Asylum Act 2002. Section 117B(1) provides that the maintenance of effective immigration controls is in the public interest. I have found above that the Appellant cannot meet requirements of the immigration rules in relation to her family life.
14. I have no evidence of the Appellant's English language skills (section 117B(2)).
15. The Appellant is supported financially by her sons and I find that she is financially independent (section 117B(3)). Omar gave evidence that he earns £35,000 per annum. In relation to her healthcare needs, she gave evidence that her medication still comes from Egypt. She pays for it from her husband's state pension. Omar gave evidence that, when the Appellant has used NHS services, she comes up on the system as not being entitled to free care, and so his details have been given to the NHS for the payment of any bills. I find that the Appellant and her sons are fully aware that the Appellant is not entitled to free treatment on the NHS. I find that her sons have undertaken to the NHS to pay any bills. I find that she is not a burden on the public purse.

16. Sections 117B(4) and 117B(5) do not apply to family life. However, it is nevertheless relevant and significant that the Appellant has never been in the United Kingdom unlawfully. She came here on a visit visa with her husband. She did not intend to remain in the United Kingdom. It was only due to the traumatic circumstances of the sudden death of her husband in the United Kingdom that she remained here. She made this application when she still had leave to remain. She has never been in the United Kingdom without leave. I find that she is not in the category of appellants who come to the United Kingdom on a visit visa with no intention of leaving the United Kingdom. She has not sought to frustrate the immigration rules by remaining here illegally. This weighs heavily in her favour.
17. Section 117B(6) is not relevant. The Appellant does not have a parental relationship with her grandchildren.
18. I find that the Appellant is 71 years old. She takes medication for diabetes and blood pressure, and that she has some eyesight problems. She has poor mobility. In a letter from Dr. Vanessa Mooney dated 4 July 2018 she stated that the Appellant “really is not well enough to live alone and this will not get any better in the future” (page 309). This was not the first time that the Appellant had been to see Dr. Mooney. There is another letter from her dated 7 February 2017 (page 304).
19. Neither the Appellant nor her sons made any attempt to exaggerate her needs. The Appellant has not claimed that she cannot manage basic personal tasks such as dressing. Omar gave evidence that her mobility was “not what it used to be”, but that she was able to carry out basic personal tasks. However, given her age, her mobility problems and the nature of her medical conditions, I find on the balance of probabilities that she will need more assistance in the future.
20. I find that she has two supportive sons in the United Kingdom who see it as their duty to look after their mother. Especially taking into account Omar’s oral evidence of the impact that the death of his father had on him, I find that if the Appellant were to return to Egypt, and he was not able to fulfil this duty in the way he considers to be right, this would have significant impact on him, especially given the circumstances of their father’s death. Omar gave CPR to his father, and he and his sons were present when his father died.
21. I find that the Appellant has two sisters in Egypt. One lives in Cairo, and one in El Mahalla. The Appellant’s home was in Alexandria. One sister lives with her daughter. She is not well, and her daughter cares for her. The other sister lives with her son.
22. I find that the only income the Appellant has is her husband’s state pension, 4,000 Egyptian pounds, which amounts to about £190 per month. The Appellant and her husband lived in rented accommodation. The Appellant’s sons are still paying the rent on this property. Omar gave evidence that it was, in effect, peppercorn rent. They had rented it for 50 years and paid about £1 per month. Omar gave evidence

that, due to the low rent, they could be evicted at any time. The rent was this low as it was a very old contract.

23. The Appellant said that she would not be able to get a carer in Egypt. She had asked the person who used to come and clean for them on a weekly basis, but she would not stay overnight. Her sons had also asked her, but the answer was the same. Omar gave evidence that he had recently researched the possibility of a carer. It would cost about £500 per month for a carer to come in for eight hours a day, for five or six days per week. He gave evidence that he worried about leaving the Appellant alone without any care overnight. He would also worry about her as an elderly lady living alone with someone they did not know.
24. Omar gave evidence that his father, the Appellant's husband, used to do everything. He was "the boss" at home. The stronger parent had died, and the weaker one had survived. The effect on him of being with his father when he died had been that he was really worried now about his mother, and panicked if she got the flu, for example.
25. Taking all of the above into account, I find that the Appellant would not get the level of care in Egypt that she gets from her sons. I find that overnight care would be unaffordable, even if it were available. Importantly I find that she would not get the emotional support that she gets from her sons from a carer. She has no family in Egypt who would be able to care for her.
26. I have considered very carefully whether family life could be maintained with the Appellant living in Egypt and her sons remaining in the United Kingdom. I have found above that the Appellant would not get the level of care in Egypt that she gets from her sons. I find that this support forms a very important part of their family life, given the trauma that they have been through with the death of their father. The Appellant accepted that she could contact her sons using the phone, but I find that this contact would not replace daily physical contact.
27. I have also considered the best interests of the Appellant's grandchildren. They must be a primary concern following the case of ZH (Tanzania) [2011] UKSC 4. They are British citizens. Since December 2016, for some two and a half years, she has been living with them for half of the week.
28. Omar's sons provided letters (pages 34 and 36 of the FTT bundle, and pages 2 and 4 of the Upper Tribunal bundle). They stated that the Appellant looked after them while their mother went to work. They said that they wanted her to stay as she needed them to look after her. They wanted her to stay living with them for their entire lives. While I accept that these may be described as the normal wishes of a grandchild, and there is no indication that their parents are unable properly to look after them, I find that given the traumatic circumstances of their grandfather's death, they have a closer relationship with the Appellant than would have been the case otherwise.

29. In a letter from Sarah Harris, school home support worker, dated 5 April 2019 (page 6 of the Upper Tribunal bundle) she states that the Appellant plays an invaluable part in the family structure. She describes her as a “vital part of the family”. It is clear from this evidence that the Appellant is known to the school, and is known to play a part in her grandchildren’s lives.
30. In relation to Ahmed’s son, his parents are now divorced. Ahmed stated that the Appellant had been “fully supportive (emotionally and physically) throughout the whole ordeal” ([12] of his witness statement). He gave evidence that the Appellant looked after his son “deeply” during the period immediately after the divorce.
31. I find that the Appellant is part of her grandchildren’s lives and routines. I find that, in all the circumstances, especially given that they were present when their grandfather died, and in the interest of maintaining stability in their lives, it is in the best interests of the Appellant’s grandchildren for the Appellant to remain in the United Kingdom.
32. This is an unusual and compelling set of circumstances. It is due to the traumatic event of her husband’s sudden death that the Appellant finds herself living in the United Kingdom, being wholly supported by her sons. Her husband is buried in the United Kingdom, and she visits his grave regularly. It weighs heavily in the Appellant’s favour that she is not a burden on the public purse, and that she has not attempted to evade immigration control. She enjoys family life with her sons and grandsons which could not be enjoyed at a long distance. The physical and emotional support that they provide could not be replicated if she were to return to Egypt.
33. Taking all of the above into account, and giving weight to the best interests of the Appellant’s grandsons, I find that the balance comes down in favour of the Appellant. I find that the decision is not proportionate. I find that the Appellant has shown, on the balance of probabilities, that the decision is a breach of her rights, and those of her sons and grandsons, to a family life under Article 8 ECHR.

Notice of Decision

34. The Appellant’s appeal is allowed on human rights grounds.
35. No anonymity direction is made.

Signed

Date 24 May 2019

Deputy Upper Tribunal Judge Chamberlain

TO THE RESPONDENT
FEE AWARD

As I have allowed the appeal and because a fee has been paid or is payable, I have considered making a fee award. Further evidence was provided for the appeal. In the circumstances, I make no fee award.

Signed

Date 24 May 2019

Deputy Upper Tribunal Judge Chamberlain