Upper Tribunal

(Immigration and Asylum Chamber) **Appeal number: HU/00955/2020 (V)**

THE IMMIGRATION ACTS

Heard Remotely at Manchester CJC **Decision & Reasons Promulgated**

On 19 October 2021 **On 16 November 20210**

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

MRS MALIKA ACHIQ

(ANONYMITY ORDER NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS (V)

For the appellant: Mr H Broachwalla, instructed by Elkettas & Associates Solicitors

For the Respondent: Mr A McVeety, Senior Presenting Officer

This has been a remote hearing which has been consented to by the parties. The form of remote hearing was video by Skype (V). A face-to-face hearing was not held

because it was not practicable, and all issues could be determined in a remote hearing. At the conclusion of the hearing, I outlined my decisions and reasons, reserving the full reasons to be provided in writing, which are set out below. The order made is described at the end of these reasons.

1. The appellant, who is a national of Morocco with date of birth given as 27.10.55, has appealed with permission to the Upper Tribunal against the decision of the First-tier Tribunal promulgated 19.2.21 (Judge Woolley), dismissing on all grounds his appeal against the decision of the Secretary of State, dated 17.12.19, to refuse his application for entry clearance to the UK as the adult dependent relative (ADR) of his British citizen daughter in the UK, pursuant to EC-DR1.1(d) of Appendix FM.

2. Permission to appeal was refused by the First-tier Tribunal on 28.4.21. However, when the application was renewed to the Upper Tribunal, Upper Tribunal Judge Owens granted permission on all grounds on 18.6.21, considering it arguable that "the judge's assessment of Article 8 ECHR is flawed, although the appellant will need to be prepared to address the materiality of any error".

3. Only on the day of the hearing, has the Upper Tribunal received the appellant's late-submitted skeleton argument (dated the day of the hearing) and a bundle comprising 214 pages. In relation to the bundle, no explanation has been provided for the failure to comply with the Tribunal's standing directions. However, Mr Broachwalla explained that he had only been instructed very late in the day. I note his skeleton argument was emailed to the Tribunal after 2am on the day of the hearing. Despite the lateness, I was grateful for his skeleton argument which concentrated on the viable grounds of appeal rather on those originally drafted, some of which were frankly nonsense.

4. As I explained to the parties and as Mr Broachwalla accepted, at this stage I am only concerned with the evidence that was before the First-tier Tribunal at the time the judge made the decision under challenge. For example, the recent witness statement of the sponsor or more up to date bank statements are not relevant to the error of law issue. There was no explanation as to why unreported decisions of the Upper Tribunal were provided within the bundle but, to his credit, Mr Broachwalla did not seek to rely on such materials.

5. I have carefully considered the decision of the First-tier Tribunal in the light of the very helpful written and oral submissions and the grounds of application for permission to appeal to the Upper Tribunal.

6. The task of the Upper Tribunal is not assisted by the fact that the respondent's refusal decision was flawed in its drafting, comprising several paragraphs stating that the appellant met the various suitability and eligibility requirements but other paragraphs stating that she did meet those requirements. Clearly, the author of the refusal decision omitted to delete those parts of a pro-forma

decision which were not relied on. For example, the decision contains the phrase, "You must make clear on what basis you are refusing the case, what evidence you considered and what, if any, specified evidence the appellant failed to provide", which was clearly addressed to the author.

7. The Entry Clearance Manager review of 18.3.20 is of more assistance than the refusal decision, explaining the various ways in which the appellant failed to meet the specified evidence requirements to demonstrate that the appellant required long-term personal care as a result of age, illness or disability, and that she would be unable, even with the practical and financial help of the sponsor, to obtain the required level of care in the country where she is living because it is not available and there is no person in that country who can reasonably provide it, or because it is not affordable.

8. Unfortunately, the First-tier Tribunal decision frequently confused the sponsor with the appellant, making some of the findings appear peculiar. I have, I hope, managed to work out when the judge was referring to the appellant and when he was referring to the sponsor.

9. The First-tier Tribunal concluded that the appellant could not succeed under the Immigration Rules. At [30] of the impugned decision, the judge found that the appellant suffered from a variety of medical conditions which made it difficult for her to function on her own so that he was satisfied that E-ECDR2.4 was met.

10. However, in considering the requirement of E-ECDR 2.5 from [31] of the decision onwards, the judge did not accept that care could not be provided in Morocco or that it was unaffordable, noting that the sponsor and her husband were, by any standard, extremely well off and that there were other children of the appellant still living in Morocco who could at least assist in finding and organising such care, even if they would not be able to finance it.

11. Furthermore, and perhaps more importantly, as Mr Broachwalla was obliged to accept, the medical evidence provided with the application did not come close to meeting the evidential requirements of the Rules in that a letter from a clinic in Rabat did not comment on the needs of the appellant. More significantly, there was no supporting medical evidence that the appellant needed specialist care or that her psychological and/or emotional needs could not be met in Morocco with further care in the form which she is currently receiving at the sponsor's expense. As Mr McVeety submitted there was no evidence of any complex care needs. Once the judge found that skilled care was not required, it was open to the judge to conclude that the type of care assistance she already needs would be sufficient to meet her needs.

12. In large part, the grounds as originally drafted are little more than a disagreement with the findings and conclusions of the First-tier Tribunal and amount to an attempt to reargue the appeal. For example, reliance was placed on

the sponsor's claim that her younger brother is unreliable and that her older brother does not have contact with their mother. It is argued that the judge's conclusion that the brothers could assist in efforts towards finding suitable care was "highly speculative". For the reasons set out herein I do not agree with the submission. Contrary to the submissions made to me, I do not accept that the judge's findings about the appellant's sons necessarily inconsistent with the sponsor's evidence, which at [23] of the decision the judge found credible. The fact is that there are two sons, at least one of whom has been willing to assist his mother in the past. The fact that he is said to be unreliable does not mean that he is unwilling to assist in the ways suggested by the First-tier Tribunal. I am satisfied that the judge was entitled to conclude that their mother could reasonably expect the at least some support of her sons in securing appropriate care. In the circumstances, I reject the criticism that the judge engaged in unfounded speculation which, Mr Broachwalla submitted, infected the subsequent article 8 assessment.

13. However, even if the judge erred in this regard, the error is not material to the outcome of the appeal as the judge found that the care the appellant actually needs can be provided in Morocco. This is so even without any assistance of her sons. I am satisfied that the judge was entitled to find that the appellant's circumstances are not so compelling as to render refusal of entry clearance unjustifiably harsh and, therefore, disproportionate.

14. Similarly, the grounds dispute the judge's conclusion that the appellant does not require specialist care, describing it as "pure speculation". Again, for the reasons set out herein I do not agree. I am satisfied that the judge has provided cogent reasoning at [35] of the decision for the conclusion that even taking the evidence at its highest, it had not been shown that the appellant required specialist care. The appellant already receives unskilled care and, as the judge reasoned, there was no reason why the provision of the care for the tasks needed to meet the appellant's care could not be provided by increasing the level or frequency of care. Furthermore, the Rules are quite clear as to the standard of specified evidence required to demonstrate that the appellant met the requirements of the Rules and care was needed that could not be provided in Morocco. The appellant conspicuously failed to meet that standard, which, as stated, is a highly relevant factor in the article 8 assessment. Article 8 is not a shortcut to compliance with the Rules. If the appellant is genuinely in need of care that cannot be provided in Morocco it was open to the appellant to provide specified evidence compatible with the Rules and the specified evidence requirements.

15. Without that evidence, she cannot, barring other compelling circumstances, expect to be granted entry clearance. In considering the appeal under article 8 ECHR, that being the only ground of appeal to the First-tier Tribunal, the judge correctly stated at [39] and again at [41] that the fact that the Rules could not be

met was an adverse and "weighty" factor in the article 8 assessment. Although the sponsor had not lived with the appellant for many years, the judge accepted that there was a bond of economic dependence on the sponsor that sufficiently constituted family life for the purpose of engaging article 8. Mr Broachwalla accepted that the grounds arguing that family life existed were unnecessary. After considering the circumstances of the appellant and the sponsor, the judge found nothing exceptional or compelling in those circumstances and concluded at [45] that refusal of entry clearance was proportionate to the article 8 rights to respect for private and family life.

16. As stated, it is only if the circumstances were/are so compelling as to justify granting leave outside the Rules on the basis that to refuse to do so would be unjustly harsh, and therefore disproportionate, could the appellant succeed on human rights grounds. The Rules provide a route for entry of an ADR, which, conspicuously, the appellant did not meet.

17. In respect of the judge's article 8 assessment outside the Rules, the grounds as drafted are, once again, largely a disagreement. For example, at [3] of the grounds it is asserted that there was no public interest which can possibly outweigh the appellant's and her sponsor's human rights under article 8 ECHR". With respect, that was a matter for the judge to decide; the argument as drafted and advanced to the Upper Tribunal is unsustainable in principle and to his credit Mr Broachwalla did not pursue that ground. Providing that the article 8 assessment and the conclusion drawn from it are cogently justified on lawful grounds open to the judge on the evidence, the finding that the proportionality balancing exercise falls against the appellant was unarguably open to the First-tier Tribunal.

18. For reasons unknown, the grounds as drafted go on to argue in some detail that there was family life between the appellant and the sponsor. As stated and as recognised by Mr Broachwalla, this was unnecessary when the existence of family life sufficient to engage article 8 was accepted by the judge and was, therefore, not in dispute.

19. The final assertion at [8] of the grounds that the judge failed to properly consider the requirements of E-ECDR 2.5 and article 8 ECHR is no more than repetition of a disagreement with the decision.

20. I am satisfied that on the facts of this case, the First-tier Tribunal was entitled to conclude at [45] of the decision that "applying the balance sheet approach it is clear that the countervailing factors do not outweigh the importance attached to the principle of legitimate immigration control" and that the appellant had not demonstrated a "very strong or compelling case" sufficient to justify granting entry clearance where the Rules were not met and the specified evidence not provided. I am satisfied that the judge properly conducted a proportionality

balancing exercise between the public interest and the rights of the appellant and the sponsor to respect for private and family life. The judge assessed the (limited) extent of that family life and pointed out the obvious deficiencies in the evidence. The conclusions reached were ones properly open to the First-tier Tribunal and for which cogent reasoning has been provided.

21. Frankly, given the very specific and limited ambit of entry clearance for an ADR and that the appellant failed to discharge the burden of proof that she met both E-ECDR 2.4 and 2.5, and failed to provide the specified evidence required under the Rules, I am satisfied that on the facts of this case her poorly prepared application was always doomed to failure. Amongst other matters, as the judge pointed out and as I have rehearsed above, the appellant was already in receipt of limited and non-specialised care and the sponsor could very well afford to provide a greater level of such care in Morocco. Whether or not the appellant's sons were interested in supporting their mother, her needs as evidenced do not require her to be admitted to the UK but could be adequately provided in Morocco.

22. In the circumstances and for the reasons set out above, I find no material error of law in the decision of the First-tier Tribunal.

Decision

The appeal of the appellant to the Upper Tribunal is dismissed.

The decision of the First-tier Tribunal stands and the appeal remains dismissed on human rights grounds.

I make no order for costs.

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 19 October 2021