Upper Tribunal

(Immigration and Asylum Chamber) **Appeal number: HU/15998/2019**

HU/16004/2019 (V)

THE IMMIGRATION ACTS

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

On 24 May 2021 **On 3 June 2021**

Before

UPPER TRIBUNAL JUDGE PICKUP

Between

MOHAMMAD ALI IZADI

ROBAB SEIF KASHANI

(ANONYMITY ORDER NOT MADE)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DECISION AND REASONS (V)

For the appellant: Mr S Hingora of Counsel, instructed by R Spio & Co 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 reserved my decisions and reasons, which I now give. The order made is described at the end of these reasons.

1. The appellants, who are Iranian nationals with dates of birth given as 21.3.37 and 5.7.48 respectively, have appealed with permission to the Upper Tribunal against the decision of the First-tier Tribunal promulgated 2.12.20 (Judge Wood), dismissing their linked appeals against the decisions of the Secretary of State, dated 27.8.19, to refuse their applications made on 17.5.19 for entry clearance to the UK as adult dependent relatives to join their son present and settled in the UK, pursuant to ECDR 2.4 and 2.5 of Appendix FM of the Immigration Rules.

2. Permission to appeal was granted by Resident First-tier Tribunal Judge Zucker on 20.1.21, considering it "arguable that the judge erred in law in going behind a concession. The Upper Tribunal may be assisted by consideration of the guidance in NR (Jamaica) [2009] EWCA Civ 856."

3. The Upper Tribunal has received the respondent's Rule 24 rely, dated 29.1.21.

4. Also received is the appellant's application to admit further evidence under Rule 15(2A) together with a letter to the Home Office, dated 19.4.21. However, as I explained to Mr Hingora, at this stage I am only concerned with the materials before the First-tier Tribunal when making the impugned decision.

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

6. Mr Hingora relied on the grounds as drafted in his document dated 29.12.20 and made extensive further submissions, referring me to the evidence in the appellant's two bundles, the second of which was not with the Tribunal's file and was emailed to me at the outset of the hearing.

7. Mr Hingora's primary submission is that the judge went behind the respondent's concession set out in the refusal decision that the first appellant met the requirements of E-ECDR 2.4, in that he requires "long term personal care to perform everyday tasks." However, the respondent considered that such care was readily available in Iran stating, "There is nothing in your application to suggest that with the practical and financial help of the sponsor you are unable to access the level of care that you require in Iran."

8. Mr Hingora argued that despite the judge specifically stating at [44] that he did not go behind the concession, which is referenced repeatedly in the decision, including at [3], [24] and [27], by stating at [43], "However, it was my opinion

that this did not bring an end to this issue," the judge did go behind the concession, as Mr Hingora maintained was demonstrated in the succeeding paragraphs of the decision.

9. Although I repeatedly indicated to Mr Hingora that I accepted that there had been a concession regarding E-ECDR 2.4 and that if the judge had gone behind the concession that would amount to an error of law, he spent a good part of his submissions in labouring the point that such a concession was made by the respondent. I have no doubt and accept the point being made that the judge should not have gone behind such a concession without affording the parties the opportunity to address it, which point was not at all challenged by Mr McVeety.

10. However, I am satisfied that, as the Rule 24 reply suggest, this first and primary ground is based on a misunderstanding of the decision. The judge did not go behind the concession made. The judge was also accurate to state that the concession was not the end of the matter. E-ECDR 2.5 requires the applicant to also demonstrate that he 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 other person in that country who can reasonably provide it; or (b) it is not affordable." The Rule 24 response states, as Mr McVeety also submitted, "The question the judge was considering was the exact nature of the health issues faced by the first appellant and this was required for consideration of **Para E-ECDR 2.5**, specifically what help the appellant needed and it's availability."

11. I am satisfied that it would have been impossible for the judge to assess whether the required level of care could be met in Iran without first knowing what level of care was in fact required, which necessitated consideration of the available evidence on that issue. I reject as nonsensical Mr Hingora's submission which was to the effect that once the 2.4 concession was made, the judge was prohibited from further considering the need for care. To put it another way, the fact that personal care to perform everyday tasks was needed was not in dispute. What was in issue was whether the care the first appellant needs could be provided in Iran. It was in relation to this second issue that the judge found the evidence woefully inadequate, for the reasons explained in the decision, and which necessitated the judge's own enquiries of the sponsor, as set out at [46] of the decision. I reject as clearly ill-founded the submission that in considering the evidence the judge in any way went behind the concession.

12. I listened with care to Mr Hingora's further submissions as to the medical evidence, in particular the so-called independent evidence, to which he referred me as set out in the appellant's bundles. I accept that in general terms there are difficulties and challenges in providing certain types of care in Iran, including home care. He complained that this had not be referenced either adequately or

at all in the First-tier Tribunal decision. As the judge noted at [44], he was "given no further medical evidence as to the likely care needs." However, it is clear from the decision that the judge found that, despite the difficulties, the first appellant's needs did not extend beyond personal care at home, which the judge concluded his wife, the second appellant, could continue to provide. It follows that evidence about the quality of care in care homes or hospitals was not directly relevant.

13. In summary, the judge found, with justification, that the evidence failed to elevate the first appellant's care needs beyond those which could be provided at home by his wife. It follows that I find no merit in the second and third grounds that the judge failed to record critical matters and/or gave adequate reasons for rejecting the independent evidence as to residential care in Iran. The evidence Mr Hingora took me to related to the provision of specialist medical care. That evidence was no longer relevant once the judge concluded that the first appellant did not need specialist care and that care needs could be met at home without such specialist care provision. I am satisfied that such a conclusion was open to the judge on the evidence.

14. In the alternative, for the reasons set out at [50] of the decision, the judge found that home care by the second appellant could be supplemented by assistance from external carers. In reaching that conclusion, at [51] the judge rejected the claim that a carer could not be found, finding the sponsor "not candid" in evidence on this point. It was noted that one way or another care was being provided and that at some time in the past the appellants had had private care. The suggestion in the documentary evidence that the appellants had had a "bad experience" with private care is not determinative of that issue. It is an obvious point that a prior 'bad experience' with private care does not preclude all and any future private care provision. I also bear in mind the evidential requirements of FM-SE paragraph 35, which requires the appellant to demonstrate 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 Iran and that evidence has to come from a central or local health authority, a local authority, or a doctor or other health professional. Although the professional evidence relied on outlined difficulties in providing care, it fails to demonstrate that the appellant would be "unable" to obtain the required level of care with the sponsor's assistance. In the premises, I reject these grounds as without merit and unfounded when the decision is properly considered as a whole.

15. The fourth ground as advanced in submissions by Mr Hingora amounts to a complaint that the judge relied on his own research as to whether the sponsor was prohibited in law from sending money to Iran, because of sanctions. Complaint is also made that the judge's suggestion that the sponsor could draw money from his account to send to Iran through money transfer services had no

legal or evidential basis. However, a reading of the decision between [59] to [61] reveals that whilst the judge considered the sponsor to be wrong in law on this point, it was accepted at [60] that because of banking policy, the sponsor would not be able to transfer funds directly from his bank. It follows that if there was an error on the part of the judge by researching the matter, it was not material. The suggestion at [61] of withdrawing cash and sending it by money transfer services was no more than that, a suggestion. The important point was that the judge concluded at [62] that one way or another, the sponsor would be able to continue to financially support his parents. I do not accept that such a finding required positive evidence to that effect and note that there was no adequate evidence that the sponsor was prevented from doing so, regardless of his alleged and somewhat speculative fears of doing so, the burden of demonstrating that being on the appellants. I am satisfied that the judge was entitled to conclude as indicated in the decision and that adequate and cogent reasoning for that conclusion has been provided.

16. It may be that further evidence, including that contained in the Rule 15(2A) application may have been sufficient to meet the requirements of the Rules and it may be that the appellants will be able to make a further application. However, on the evidence that was before the First-tier Tribunal the judge was entitled to conclude that the requirements of the Rules were not met. The judge went on to assess the claim on article 8 ECHR grounds. The grounds at [22] to [24] also challenge the article 8 assessment but they are little more than a disagreement with the findings and depend almost entirely on the earlier grounds relating to the adult dependent relative requirements. It follows that these ground also disclose no material error of law in the decision of the First-tier Tribunal.

17. 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 each appellant to the Upper Tribunal is dismissed

The decision of the First-tier Tribunal stands so that the appeal of each appellant remains dismissed.

I make no order for costs.

Signed: *DMW Pickup*

Upper Tribunal Judge Pickup

Date: 24 May 2021