Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: UI-2022-002010
HU/50434/2021; [IA/03925/2021]

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 7th September 2022	**On 2nd November 2022**

Before

UPPER TRIBUNAL JUDGE RIMINGTON
DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

MS GHODSIYEH HEKMAT
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr P J Lewis, Counsel instructed by Kidd Rapinet LLP
For the Respondent: Mr S Whitwell, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appeals against a decision of First-tier Tribunal Judge Peer, who on 1st April 2022 dismissed her appeal against a decision dated 2nd February 2021 of the Secretary of State refusing her application for leave to remain.

2. In that decision the Secretary of State maintained that there were no very significant obstacles to the appellant's integration in Iran and she did not meet paragraph 276ADE(1)(vi). It was held that the appellant had lived in

the United Kingdom for five months and it was entirely reasonable to conclude that she had spent the majority of her life in Iran, including her childhood and that there were no exceptional circumstances. The appellant had siblings who lived in Shiraz and a brother who lived in Tehran and although her contact was by phone she could relocate closer to them. There was no evidence that she could not travel and her medical condition was not life-threatening. It was not accepted that she could not re-integrate, bearing in mind the short time she had spent in the UK.

3. At the hearing before the First-tier Tribunal the Secretary of State was not represented and the sponsor, the appellant's daughter, Sanaz Haffenden, gave evidence which included that the appellant needed help with dressing and shopping and full-time assistance with daily tasks. The sponsor worked from home full-time and her brother also assisted (albeit it appeared from the evidence on a limited basis).

4. Before the Tribunal the appellant produced seven medical and psychiatric reports which included a report of Dr Lau, Consultant orthopaedic surgeon, of 9th November 2021 that the appellant required 24/7 care and could only walk a short distance.

5. The report of Dr Mahanta, Consultant old age psychiatrist, dated 21st December 2021 concluded that the appellant's presentation was consistent with a "depressive disorder of at least moderate severity" and concluded there was a level of dependence on her daughter such that it would be dangerous to entrust anyone other than family members with her care because of her mental health.

6. The matter came before First-tier Tribunal Judge Peer, who considered the medical evidence in relation to Article 3 and found that it did not meet the relevant threshold with reference to **AM (Zimbabwe) [2020] UKSC 17**. The judge also considered the matter in relation to the adult dependent relative ("ADR") requirements (although one of the requirements is that the appellant must apply from outside the UK) and any very significant obstacles under paragraph 276ADE. The judge ultimately found that the appellant did not meet the ADR requirements and that there were no very compelling circumstances.

7. The grounds of appeal were fourfold and set out:

Ground 1

8. In assessing whether the appellant could afford long-term personal care in Iran, the judge had confused two different currency units of Iran, the rial and the toman. At [50] the judge stated: "The indicative cost of 5.5 million per month for in home care does not readily present as unaffordable if the appellant receives 20 million in pension per month." However, the appellant's evidence was that she received 20 million rial per month ([27] of her witness statement), whereas the figure of 5.5 million monthly for the cost of in-home care was in toman. 1 toman was equal to 10 rial.

Accordingly, the appellant's pension of 20 million rial per month was equal to 2 million toman per month. Therefore, the estimated cost of in-home care was more than twice the appellant's monthly income.

9. The judge erred in assuming, incorrectly, that the rial and the toman were the same unit. This was a finding based on no evidence.

10. The judge had muddled the two currency units, which was an error of fact. The appellant was not responsible for this mistake. It was submitted that this was material but the appellant only needed to show that the decision *might* have been different if not for the error, not that it *would* have been different, further to **IA (Somalia) [2007] EWCA Civ 323**. The threshold was a low one. There was further difficulty on transferring money to Iran. The judge did not find it impossible for the family to send money but she did accept that there were restrictions on activity due to sanctions. The conclusion that she could afford care on her own pension, independently of her UK-based relatives, was therefore material to her reasoning.

Ground 2

11. There were inadequate reasons for rejecting the sponsor's evidence. The judge found the appellant did not require long-term personal care to perform daily tasks but she did not say explicitly why she rejected the evidence and did not give reasons for making such a finding, contrary to **MK (duty to give reasons) Pakistan [2013] UKUT 641**. The judge doubted the appellant required full-time care, simply on the basis her primary carer was working full-time, albeit from home, and it was unclear how much support the judge accepted the appellant was receiving. Self-evidently, it was possible for the sponsor to provide frequent care through the day whilst working at home and to disbelieve the sponsor for this reason was illogical.

12. The judge failed to make a finding on whether she accepted the truth of the sponsor's evidence as stated at [29] of her witness statement, "I have been looking after my mother and provide her with support and help with all her daily tasks such as cooking, washing, shopping, giving her medicine, etc.". If she accepted this evidence, then it was clear evidence that she did in fact require long-term personal care to perform daily tasks.

Ground 3

13. There were inadequate reasons for rejecting the medical evidence. The judge found the appellant did not require long-term personal care to perform daily tasks but that was contrary to the opinions of the medical experts. The Consultant orthopaedic surgeon, Mr Reddy, had stated that the appellant could not perform daily tasks without the help of her daughter and secondly, the Consultant orthopaedic surgeon Mr Lau had said that "there is no doubt in my mind that Mrs Hekmat will require 24/7 care" and that "she is requiring a lot of assistance from her daughter with all activities of daily living".

14. A judge who rejects an expert medical opinion must give clear reasons for doing so, **BN (psychiatric evidence discrepancies) Albania [2010] UKUT** 279, and no such reasons were given.

15. The judge rejected Mr Reddy's evidence on the ground that "that amendment to Mr Reddy's letter reads as the presentation of the situation to the private consultant." That was inadequate reasoning. Mr Reddy was an expert and had carried out a physical examination and had commissioned radiographs. His opinion was not just based on what the appellant told him but on the physical evidence. If Mr Reddy had thought the appellant's physical condition was in any way inconsistent with her self-described care needs he would have said so in the letter. The suggestion was that the sponsor had lied to Mr Reddy and this should be stated explicitly and supported by reasons given in ground 2 above. In relation to Mr Lau's evidence, the judge relied on the fact that Mr Lau had said the appellant "will require 24/7 care" rather than *currently* requiring care and this narrowly semantic reading of the letter was undercut by Mr Lau's statement in the same letter that "she is requiring a lot of assistance from her daughter for all activities of daily living".

16. Overall therefore, the judge gave inadequate reasons for rejecting the considered opinions of both medical experts that the appellant did in fact require assistance with activities of daily living. This was material because this issue was central to the judge's finding that the appellant had not demonstrated substantive compliance with the adult dependent relative Rules.

Ground 4

17. In ground 4, raised the question of inadequate reasons for finding no relationship of dependency. In the alternative, the judge's assessment of Article 8 outside the Rules was predicated on her finding at [71] that the appellant did not have family life with the sponsor because she did not have a relationship of dependency going beyond the normal emotional ties. That was a surprising finding on the facts of this case and needed to be supported by adequate reasoning. As emphasised in **Ghising (family life - adults - Gurkha policy) Nepal [2012] UKUT 160 (IAC)**, whether there was family life between adult family members is "highly fact-sensitive". Family life may exist where, as in **Ghising**, family members "enjoy a close-knit family life, in which they value and depend upon each other, for mutual support and affection".

18. In this case, as set out in the sponsor's evidence at [27] of her statement, the sponsor confirmed that she had been looking after her mother and all her daily tasks such as cooking, washing, shopping, giving her medicine, etc. The dependency was not only physical but also emotional. The sponsor also confirmed that the appellant wished to live the rest of her life in the UK with her, her brother and her grandchildren and cried all the time. Her vulnerability was corroborated by the medical evidence.

19. If the sponsor's evidence on these points was truthful the judge needed to explain her surprising finding that this did not constitute additional elements of dependency going beyond normal emotional ties in the **Kugathas** sense. Further, the sponsor's evidence was that the dependency was not only emotional but also physical. Conversely, if the judge thought that the sponsor was lying about the level of support she provided to the appellant he needed to say so and to give reasons for such a stark finding.

The Hearing

20. At the hearing Mr Lewis relied substantially on his written grounds of appeal. In relation to the first ground, he submitted that the judge accepted there would be issues regarding the transfer of money to the appellant in Iran and it was clear that the assessment of income was material as to whether she would be able to support herself in Iran. All that needed to be shown was that the decision may have been different had the judge approached the facts correctly.

21. The judge accepted also that the appellant received support to a reasonable degree and that was clear from [45] to [46]. The judge did not reject the evidence of support provided by the sponsor in her witness statement at [29] and accepted that the sponsor did support the mother. The judge did not say that she was not credible or that she was lying when the daughter submitted that she gave extensive support. The judge merely did not give adequate reasoning for rejecting her evidence.

22. In relation to ground 3, the judge rejected the medical evidence but without adequate reasoning. The judge found the appellant did not require long-term personal care but that was contrary to the medical evidence of the orthopaedic surgeon Mr Reddy and the psychiatric consultant Mr Lau. The judge in particular gave a narrow reading of Mr Lau's letter.

23. In relation to ground 4, although we raised with Mr Lewis whether the challenge in relation to the judge's lack of finding on family life was material because the judge had gone on to a proportionality assessment, he nonetheless submitted that the previous findings tainted the findings of the judge on proportionality.

24. In response, Mr Whitwell questioned the materiality of the judge's conflation of rials and toman in two respects. The appellant's case was not predicated on a question of finance but the practicalities of care. Further, albeit that the ADR Rules were not directly relevant, if the error in relation to currency only went towards the Rule on eligibility E-ECDR.2.5 and the question was still that the appellant did not meet the requirements of ADR 2.4. The critical question at E-ECDR.2.5 was that the applicant 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 either (a) it is not available and there is no person in that country who can reasonably provide it; or (b) it is not affordable.

25. In fact, at E-ECDR.2.4 the applicant must as a result of age, illness or disability *require* long-term personal care to perform everyday tasks and the judge had not accepted this. That was critical.

26. The judge found a range of reasons why the decision was not disproportionate, including the fact that there were no very significant obstacles to the appellant's removal to Iran, she had an inability to speak English and the judge had applied Section 117B(5). It was quite clear that the sponsor was able to continue to visit the appellant and indeed, there were two visits in 2020.

27. In relation to grounds 2 to 4, we were encouraged to exercise caution in approaching this decision, which contained ample reasoning and indeed, the decision should be read as a whole.

28. On ground 2, the judge is not saying he found the sponsor not credible. It was not a question of credibility and indeed, at [86] the judge stated there was no issue as to the good character of the sponsor. The judge was merely just saying that the level of support required was not as high as put or by the sponsor and therefore the appellant did not meet the Rules. The critical paragraph was at [86] where the judge found that there would be hardship and difficulty but that was insufficient to meet very significant obstacles or show that the decision was disproportionate.

29. All of the medical evidence was taken into account, including that of the orthopaedic surgeon and the cardiologist.

30. On ground 3, the judge gave clear reasons for rejecting the medical evidence, not least that Mr Reddy's letter was amended and it was not clear if in relation to Mr Lau's report as to whether 24/7 care was required now or in the future. There was no speculation by the judge in relation to this decision**. The judge gave reasoning as to why he rejected the daughter's evidence as could be read in the decision.**

31. If the medical condition of the mother and appellant was as serious as purported it was surprising that the daughter could take a senior role in the financial sector, albeit working from home. In effect, the Upper Tribunal was being told what to make of the evidence.

32. In relation to ground 4, at [86] it was clear that the judge did consider when approaching proportionality the wider assessment of Article 8 both in terms of private and family life.

33. Mr Lewis in response submitted that the judge's conclusion that the sponsor was working on a full-time basis meant that it was not possible to be providing care at home was an illogical finding. The sponsor had confirmed that she was indeed providing care and the medical evidence was corroborative.

Analysis

34. The first ground of appeal was based on an asserted error of fact by the judge in confusing two different currency units in assessing whether the appellant could afford long-term personal care. This ground is intertwined with the second and third ground and the judge's assessment of the evidence. It is clear that the judge did conflate rials and toman but the real question was whether this was material. The judge in our view correctly approached the appeal through the lens of the adult dependent relative Rules, albeit that the appellant could not comply because she has made an in-country application having entered the UK as a visitor and overstayed. We accept that the appellant only needs to show that the decision may have been different if not for the factual error but the real question is whether the appellant required long-term personal care to perform everyday tasks. It is important to read the decision as a whole. The judge made a comprehensive assessment and at [50] and [51] the judge wrote this:

> *"50. The appellant's written statement sets out that she receives a monthly pension of 20,000,000 Iranian rials. The indicative cost of 5.5 million per month for in home care does not readily present as unaffordable if the appellant receives 20 million in pension per month. There was however very little detail in evidence before me as to the appellant's likely expenses and outgoings living in Iran or the cost of living there at all.*
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> *51. There was very little background evidence available to me as to residential and domestic care for elderly people in Iran. The provision of the tariff for domestic care for the elderly illustrates that there is a sector which provides this in Iran. The sponsor's evidence is that she had located residential care homes given she says she sent an email to each of three homes although she did not get any replies. The appellant's evidence is therefore that care homes do exist in Iran."*

35. It was therefore the judge's finding that there was overall "insufficient evidence as to the appellant's likely expenses and outgoings" and stated there was "very little background evidence available to me as to residential and domestic care for elderly people in Iran". That finding should be viewed in the context of the further findings made by the judge as to the requirement of the appellant for care and at [52] the judge made her finding in the alternative as follows:

> *"52. In all the circumstances, the appellant has not demonstrated taking account of the relevant standard of proof that care is not available in Iran and there is no person who can reasonably provide it or that it is not affordable."*

36. This is quite clearly an alternative finding as to whether the appellant can afford it or not and, as Mr Whitwell submitted, the appeal was not put forward by way of challenge on cost.

37. Turning to the medical evidence and ground 3, the judge considered the Article 3 medical claim and clearly addressed the medical evidence at the outset. The judge addressed the evidence from Dr Clive Lawson, consultant cardiologist following a private assessment on 18th January 2021 and recorded that he had considered that she was cared for by her family in the UK "but they are concerned that should she return to Iran her condition may change (risk of falling due to lack of supervision, poor medication compliance and the physical difficulties of her travelling to and from her doctor and pharmacy)"([32]). That consultant found that on the basis of evidence presented there was "no medical reason why the appellant could not travel, albeit she would require assistance when travelling through the airport". Her condition was said to be mild and no interventions were required.

38. The judge also considered the clinical assessment from Mr Kumar Reddy, consultant orthopaedic surgeon, who noted that the appellant had an unremarkable right hip and osteoarthritis in the left. The judge noted that that letter had been amended to include the statement "and she cannot perform daily tasks without the help of her daughter". The judge also remarked upon the report from Dr Stephen Lau, consultant orthopaedic surgeon, on 20th October 2021, who recorded that the appellant suffered from hypertension, hypercholesteremia and knee osteoarthritis and takes medication for pain. That letter too was marked as amended to include the statement: "There is no doubt in my mind that Mrs Hekmat will require 24/7 care." A further report of Dr Rita Joarder, consultant radiologist, revealed significant degenerative changes within the cervical spine ([32]). A further report from consultant old age psychiatrist Dr Mahanta after a consultation on 21st December 2021 found the appellant had a depressive disorder of moderate severity and she required "a holistic approach to her mental health treatment".

39. The judge drew from this that the appellant had knee arthritis and suffered from back pain and moderately severe depression. The judge also noted that the evidence before her included the letter from the Iranian consultant which indicate that treatment and care was available in Iran and the appellant was receiving such care for her physical conditions ([35]). At [36] the judge recorded that the background evidence cited in the respondent's refusal letter set out that access to medical care is a right for all Iranian citizens who can have as much as 90% of the costs covered by the state and the judge concluded that there was a functioning healthcare system in Iran to assist the appellant. In sum, the appellant's circumstances fell short of the "relevant threshold laid down by the Supreme Court in its judgment in **AM (Zimbabwe)**". The judge found that there were no grounds to find that the appellant faced a "serious, rapid and irreversible decline in health resulting in intense suffering or any significant reduction in life expectancy".

40. The judge's approach to that evidence was not challenged in terms of Article 3 but the judge's treatment in relation to Article 3 showed that she had undertaken a close review of that medical evidence. Under the ADR the appellant contended that she had fulfilled the requirements of E-ECDR.2.5 and 2.4 of Appendix FM and that she required long-term personal care to perform everyday tasks. The judge rightly rejected the Iranian doctor's letter on the basis that it was written at a point on 2nd June 2021 when the appellant had been in fact been the UK for eighteen months and although stating that she needed 24/7 care there was no suggestion that the appellant received that whilst she was in Iran. It was open to the judge to place little weight upon this letter in relation to the long-term personal care.

41. On the basis that the letter of Mr Reddy and Mr Lau were both marked as amended it was entirely open to the judge to conclude that Mr Reddy's letter read as "the presentation of the situation to the private consultant". It was further open to the judge to consider that Mr Lau's assessment related to the future and was not clear evidence that the appellant's circumstances were such that she currently required 24/7 care. Although it was submitted by Counsel that that meant professional care there was in fact no clarification within the medical reports and, as the judge adequately reasoned when rejecting this evidence stated that , "the sponsor and her brother are not medical professionals or professional care assistants" as the brother works as a delivery driver and the daughter worked for Invesco full-time as a data governance analyst.

42. In relation to ground 3 therefore we find that there were adequate reasons for rejecting the medical evidence. The judge noted that Mr Reddy had commissioned radiographs, there was no indication that his report post-dated those and it was open to the judge to remark upon the additions to the reports. We find that the judge gave adequate reasons for rejecting the considered opinions of the medical experts and for thus rejecting the fact that the appellant did require this level of assistance and that is the critical factor that was asserted.

43. It was further open to the judge in relation to ground 2 to reject the level of care said to be required by the appellant and, as submitted by the sponsor, on the basis that the sponsor worked full-time. We do not find this an illogical conclusion as suggested by Mr Lewis. Indeed the threshold for perversity is high. Full-time work, whether at home or in an office, is nonetheless full-time work and that of a data governance analyst paid £65,000 per annum is incontrovertibly demanding work. Further, there was no indication that the mother did in fact receive 24/7 care. There is no indication that the judge found the sponsor lying or that she found the sponsor incredible merely that first she was not a medical profession, she would see the evidence in the light of her emotional attachment to her mother and further that her evidence was not consistent with caring for everyday tasks and working full time. Further the brother visited only once a week and implicitly his evidence did not necessarily reflect the situation in terms of personal care.

44. At [46] the judge took into account the physical difficulties of the appellant and that she may have "difficulties with daily tasks" but found that there were treatments outlined in the letters from the medical professionals and that there was care available in Iran. The judge stated:

> *"I accept that the appellant is currently receiving assistance and support from the sponsor to a reasonable degree although this clearly in all practical reality cannot be full-time attention and assistance. The appellant would appear to be managing on a day-to-day basis in her current circumstances with family support. On the basis of the evidence available to me however, I cannot find taking account of the relevant standard of proof that the appellant has demonstrated she currently requires long-term personal care to perform everyday tasks."*

We do not find that it appears that the appellant stated she could only receive care from the daughter in terms of mental support and indeed had previously received support from a friend in Iran who had relocated as identified at [47] by the judge. This did not indicate that the appellant could only receive care from the sponsor.

45. Having outlined the evidence above, it is clear that the judge did consider the evidence given by the sponsor but that evidence was countered by the observations and findings made by the judge which we have indicated above, not least that the expert reports were amended following their compilation, no doubt with the best of intentions but does not reflect the doctors' first assessments. In relation to credibility, there was no indication that the "appellant is not of good character". The judge simply did not accept the description of the appellant's care needs were as those described by the sponsor and the appellant. The consultants opined that she needed 24/7 care but that contrasted with even the evidence of the sponsor herself. This would indicate that the sponsor was in attendance around the clock and in the light of her work it was clear that this was not the case.

46. The judge at [86] specifically stated that there was no indication of any criminality or lack of good character involved in the case and there was no suggestion that the sponsor was lying, merely that her evidence contrasted with the reality of the situation.

47. In relation to ground 4, as pointed out, even if the finding that the appellant had no family life with her daughter was challenged, the judge specifically stated at [86] that she gave real weight to the appellant's private life and her "strong family ties in the circumstances". The judge considered the appellant's age and infirmities and the "readily understandable preference to remain with her daughter's family in the United Kingdom" but considered that the appellant was in a position where she could return to apply for entry clearance if she wished to visit or settle in the UK.

48. The judge had found specifically that the appellant did not meet the ADR rules and that there were no very significant obstacles to her return. The judge found that the appellant had spent her childhood and the majority of her life in Iran, spoke Farsi and was familiar with customs, culture and the way of living and she had lived as a widow for a very significant period of time since 1998 in Iran until she visited the UK in 2020. She was able to operate on a day-to-day basis in Iranian society and had relationships there. She had only been in the UK for a short period of time and we note the judge recorded that the appellant retained family in Iran including in Tehran and had made visits to the UK to see her family from time to time, maintaining contact with her family.

49. Overall, the judge found at [64] there was no persuasive evidence that it would not be appropriate for the appellant to receive care from others, having noted her various medical conditions and particularly stated "there was no persuasive evidence before me that it would not be appropriate for the appellant to receive care from others or that receiving such care was inimical to her psychological integrity". There was a freestanding finding that the appellant received 20 million rials monthly in pension income and was not persuaded about the lack of ability in terms of costs, noting that she had had home support in the past ([65]). Overall, the judge found at [67] that the appellant had ties in Iran which she could now activate and her family settled in the UK could support that adjustment. In particular, it was open to the judge to find that the adjustment would entail some hardship, difficulty and upheaval but that "the evidence does not indicate that the appellant is wholly incapable of any management of her affairs or self-care and as above she is taken to be familiar with the environment in Iran". Taking the evidence holistically, it was open to the judge to find there were no very significant obstacles and no very compelling circumstances when deciding ultimately that the respondent's decision was not disproportionate. Therefore, the last ground, ground 4, to our mind does not take this appeal further.

50. The discussion at [47] onwards refers to 24/7 care but the judge had already found that the evidence that the appellant actually required 24/7 care was wanting and that the medical evidence did not support that contention. As such, we are not persuaded that any error in relation to the conflation of rials and toman and what was or was not affordable was material. The judge did state that there was no detailed background evidence to explain the current position regarding private citizens sending money to Iran and the extent to which this was restricted and found in fact that it was unclear what financial provision could be made to support the appellant by the sponsor and the extent to which this would be difficult. Overall, the judge found it was not impossible to send money to support the appellant in Iran but the findings on the sufficiency of evidence rendered, in our view, the mistake of fact on the currency or ability to send financial support, not material. Further, at [50], albeit the finding in relation to the rials and toman existed at [60] the judge made a further finding that "there was however very little detail in evidence before me as to the appellant's likely expenses and outgoings living in Iran or the cost of

living there at all". The conclusion as we have noted above was found at [51].

51. It is not necessarily the case that the appellant actually needed a residential care home, albeit that the judge did find that the homes did exist.

52. As such, it was open to the judge to find at [52] that the appellant had not demonstrated, taking account of the relevant standard of proof, that care was not available in Iran and there was no person who could reasonably provide it or that it was not affordable. Those latter findings were made in the alternative.

53. The judge gave adequate reasons when addressing the medical and sponsor's evidence as explored above and in relation to grounds 2 and 3 we find there was no material error of law.

54. On reading the decision in its entirety the decision contains no material error of law and will stand.

Notice of Decision

The appeal remains dismissed.

No anonymity direction is made.

Signed Date

Upper Tribunal Judge Rimington 21 September 2022