



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-006240
First-tier Tribunal No:
HU/50718/2022
IA/01107/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 17 May 2023

Before

UPPER TRIBUNAL JUDGE KEBEDE

Between

INDRANI KITCHAPPAN
(no anonymity order made)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms F Shaw, instructed by KTS Solicitors & Advocates

For the Respondent: Ms A Everett, Senior Home Office Presenting Officer

Heard at Field House on 19 April 2023

DECISION AND REASONS

1. The appellant is a citizen of India born on 20 April 1956. She appeals, with permission, against the decision of the First-tier Tribunal dismissing her appeal against the respondent's decision to refuse her application for entry clearance under Appendix FM as an adult dependent relative of her son.

2. The appellant applied for entry clearance on 4 October 2021 on the basis of her family life with her son. Her application was refused on 4 January 2022 on the grounds that she did not meet the eligibility relationship requirements in paragraph E-ECDR.2.1 to E-ECDR.2.5 of Appendix FM to the immigration rules as an adult dependent relative.

The respondent considered that the evidence produced by the appellant was not sufficient to show that she required long-term personal care to perform everyday tasks for the purposes of E-ECDR.2.4 or that, even if it was accepted that she did require such long-term care, she would be unable to obtain that care in India. It was not considered that there were any exceptional or compassionate circumstances justifying a grant of entry clearance outside the immigration rules.

3. The appellant appealed against the respondent's decision and her appeal was heard in the First-tier Tribunal on 22 September 2022 by First-tier Tribunal Judge Gibbs. Judge Gibbs noted the undisputed evidence that the appellant had undergone spinal surgery for multiple compression fractures in her spine on 24 December 2020 and accepted that she required personal care and attention post operatively which was provided by her husband who then died of Covid on 20 April 2021. The judge accepted that the appellant's mental health deteriorated as a result of losing her husband and that her mobility remained extremely limited and she continued to require help to carry out daily living activities. The judge noted that the Home Office Presenting Officer conceded that the requirements of paragraph E-ECDR.2.4 were met and she accordingly found that to be the case. However the judge found that the evidence did not show that the relevant care had to be provided by the appellant's family and that the required level of care was therefore unavailable in India. She concluded that the requirements of paragraph E-ECDR.2.5 were not met and that the refusal of entry clearance would not result in unjustifiably harsh consequences for the purposes of GEN.3.2 of Appendix FM. The judge accordingly dismissed the appeal, in a decision issued on 12 October 2022.

4. The appellant sought, and was granted, permission to appeal to the Upper Tribunal on the grounds that it was arguable that, given the respondent's concession that the appellant required long-term personal care to perform everyday tasks, the Tribunal's finding that such care was available in India was contrary to evidence that (a) the appellant's mental health problems required such care to be provided by a close family member, and (b) no such family member was available in India.

5. The respondent, in a rule 24 response, opposed the appeal on the grounds that the judge had gone into some detail in considering whether there was a real need, or just a preference, for day to day family care and had provided proper reasons for not accepting that the medical evidence satisfactorily established that the appellant could not be cared for by someone else. The respondent, further, disputed that there had been a specific concession made by the Home Office Presenting Officer that the requirements of paragraph E-ECDR.2.4 were met and asserted that, if there had been such a concession, it had not been made in accordance with proper procedure and thus should not have been relied upon by the judge.

6. In response to the rule 24 reply, the appellant submitted that the judge had failed to have regard to the appellant's mental health in the analysis as to why there was a real need for family care and had misunderstood what the medical professionals had identified as a "need" that the appellant be cared for by family.

7. The matter then came before me.

Hearing and Submissions

8. At the hearing, both parties made submissions. Ms Everett withdrew the second part of the Rule 24 response relating to the concession made by the Home Office Presenting Officer and accepted that he had been entitled to make such a concession

and that the judge had been entitled to conclude that the requirements of paragraph E-ECDR.2.4 were met. Ms Everett accepted that the relevant issue in dispute was in relation to paragraph E-ECDR.2.5 and the submissions therefore focussed on that part of the judge's decision.

9. Ms Shaw submitted that there was evidence before the judge that three medical professionals had recommended that the appellant reside with her family and none had said that that was simply a preference. The judge had said that she wholly accepted that evidence, which referred to the appellant's physical as well as her mental health. Ms Shaw relied upon the case of BRITCITS v The Secretary of State for the Home Department [2017] EWCA Civ 368 and paragraph 34 of Appendix FM-SE and submitted that, on that basis, the judge was wrong to find that the requirements of paragraph E-ECDR.2.5 were not met. Ms Everett, in response, submitted that the judge's decision could be upheld if her reasoning, as to why she did not accept the assertion in the medical evidence that the appellant needed to be with her family, was accepted. She submitted that the judge had wrestled with the medical evidence and had not accepted it wholesale, and had given adequate reasons for concluding as she did. Ms Shaw, in response, reiterated that the judge had erred by concluding that the evidence indicated that there was only a preference for the appellant to live with her family, since that was inconsistent with the medical evidence.

Discussion

10. As accepted by Ms Everett, Judge Gibbs was fully entitled to conclude that the appellant was able to meet the requirements of paragraph E-ECDR.2.4 on the basis of the evidence before her and on the basis of the concession made by the Home Office Presenting Officer upon which she was perfectly entitled to rely. The only point of challenge before the Tribunal was accordingly in respect of the judge's findings on paragraph E-ECDR.2.5.

11. It is the appellant's case that, in light of the respondent's concession on paragraph E-ECDR.2.4, and having found the medical evidence to be wholly credible, and having further found the deterioration in the appellant's mental health to be wholly credible, Judge Gibbs ought to have concluded that the requirements of paragraph E-ECDR.2.5 were met. The appellant submits that that is because the medical professionals all clearly recommended that the appellant required that the relevant care be provided by members of the appellant's family, given her impaired mental health. The appellant relies upon the case of BRITCITS v The Secretary of State for the Home Department [2017] EWCA Civ 368 and paragraph 34 of Appendix FM-SE in regard to the weight to be given to the evidence of the medical professionals. It is submitted for the appellant that the judge had erred by mischaracterising the recommendations of the medical professionals as being a mere preference.

12. Ms Everett accepted that, if it was the case that the judge had mischaracterised the recommendations as being mere preference, rather than a need, for care to be provided by family members, and had not provided proper reasons for characterising the evidence as such, then her decision could be set aside. It was her case, however, that the judge had provided proper reasons and was therefore entitled to reach the decision that she did. I have to agree.

13. As Ms Everett submitted, and contrary to the assertion made in the grounds of appeal, the judge did not accept the medical evidence wholesale. Neither was she required to do that, provided that she gave adequate reasons. In my view such adequate reasons were given. At [12] the judge carefully assessed the views of all

three medical professionals, Dr Alagappan, Dr Anandham and Dr Kannaiyan. She clearly had the appellant's mental health as well as her physical condition in mind when considering the nature and extent of her care needs. She was fully aware that the doctors expressed their views in terms of a "need" and a "recommendation" for support from family members. At [15], however, she noted the lack of detail and explanations in the doctors' letters and she provided cogent reasons, at [14] and [15], for concluding that they failed to demonstrate that there was such a need, as opposed to a preference, for the appellant being cared for by her family members in the UK. Having viewed the medical evidence myself it is apparent why the judge was unimpressed by it and why she accorded it the limited weight that she did in assessing the extent and nature of the appellant's care needs in terms of family support. There is certainly some merit in the respondent's observation in the Rule 24 response that the further evidence from Dr Kannaiyan produced with the application for permission to appeal to this Tribunal serves only to emphasise the inadequacy of the evidence before the judge. Clearly such post-decision evidence cannot in itself serve to undermine the judge's decision. The judge was only able to make a decision on the evidence presented to her and it seems to me that she was fully justified in according the weight that she did to that evidence.

14. It is additionally of note that the judge went on at [16] and [17] to address the care arrangements which were already in place for the appellant and her concerns about the sponsor's lack of candour in that respect, as well as the lack of evidence as to why those arrangements were inadequate. As the judge found, the medical letters did not appear to address those circumstances or suggest why they were inadequate. The appellant's Rule 25 response, at [5], criticises the judge's findings in those paragraphs as failing to take account of the appellant's impaired mental health. However, as already discussed above, it seems to me that the judge had full regard to the appellant's mental health and took that into account when assessing the evidence, and that she was entitled to find that the medical evidence failed to indicate how the absence of direct family care would adversely affect her in that regard.

15. In the circumstances it seems to me that the judge's assessment of the requirements of the relevant immigration rules took full account of all the evidence and that her consideration of the medical evidence was consistent with the principles and guidance in BRITCITS v The Secretary of State for the Home Department [2017] EWCA Civ 368 and with paragraph 34 of Appendix FM-SE. The judge gave clear and cogent reasons for drawing the conclusions that she did from the medical evidence and for according it the weight that she did. It was fully and properly open to the judge to conclude that the requirements of paragraph E-ECDR.2.5 were not met. I find there to be no material error of law in her decision and I accordingly uphold her decision.

Notice of Decision

16. The making of the decision of the First-tier Tribunal did not involve a material error on a point of law requiring it to be set aside. The decision to dismiss the appeal accordingly stands.

Signed: S Kebede
Upper Tribunal Judge Kebede

Judge of the Upper Tribunal
Immigration and Asylum Chamber

24 April 2023