Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: UI-2022-005417**
HU/51054/2020 and IA/02555/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 03 April 2023

Before

UPPER TRIBUNAL JUDGE RIMINGTON
DEPUTY UPPER TRIBUNAL JUDGE BEN KEITH

Between

KIM THAI CHIN

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr G Hodgetts, Counsel instructed by Barar and Associates
For the Respondent: Miss S Lecointe, Senior Home Office Presenting Officer

Heard at Field House on 7 March 2023

DECISION AND REASONS

1. This is an appeal against the decision of the First Tier Tribunal (FTT) decision of FTT Judge Cartin and FTT Judge Chong, heard on 26 April 2022 and promulgated on 19 July 2022. The FTT dismissed the Appellant's appeal against the Respondent's decision refusing her human rights claim with reference to paragraph EC-DR 1.1 of Appendix FM (the adult dependant relative rule) ["ADR"]. The Appellant made an application to be allowed to remain in the United Kingdom, to be cared for by her adult daughter and son. The application was made at the time of the Covid-19 pandemic and therefore, switching to that route was allowable.

2. The Appellant submitted that she had Article 8 family rights with her adult daughter and granddaughter and that she otherwise satisfied EC-DR 1.1 of

Appendix FM. The Appellant, at the time of the First Tier Tribunal hearing, was 78 years old, having been born on 25th July 1943. She is a national of Malaysai. The FTT sets out the factual basis of the decision at paragraphs 2 and 3 of its determination:

> "*2. On 28 May 2020 the Appellant applied for leave to remain in the UK on the basis of her private life here. She informed the Respondent that she had no family remaining in Malaysia and that she had depression, anxiety and worsening physical health. She claimed feeling lonely in Malaysia.*
>
> *3. On 21 November 2020, the Respondent refused her application. It was concluded that she would not face very significant obstacles to reintegration in Malaysia if required to return there. It was concluded that she had lived in Malaysia from birth and was raised there. She only entered the UK at age 76 and so was far more integrated to her home country than the UK. Loneliness was not an obstacle to reintegration. It was found that the Appellant did still have ties to the country and would still be familiar with the customs, culture and language of Malaysia. The Appellant had been receiving adequate medical treatment prior to coming to the UK and this could continue if she returned to Malaysia. She had travelled to Singapore for treatment and could continue to do so. Her medical conditions were not exceptional and did not merit a grant of leave when she did not meet the immigration rules.*"

3. The Appellant raises four grounds of appeal:

   Ground 1 is that the FTT misdirected themselves in relation to paragraph EC-DR 2.5(a) of the Immigration Rules and displayed a misreading/misunderstanding of the case of *Ribeli v. ECO Pretoria* [2018] EWCA Civ 611.

   Ground 2 is that the FTT erred in law by failing to make any findings on what was the required level of care needed by the Appellant.

   Ground 3 is split into a number of parts but, in essence, is that the FTT erred by finding that the sponsor could reasonably locate to Malaysia.

   Ground 4 is that the FTT failed to take material factors into account in assessing whether it was reasonable to expect the sponsor to relocate to care for her mother.

4. We have been provided with a vast amount of documentation in this case. On the day of the hearing, we were provided with a 435 page bundle in addition to the over 1,000 pages that were before the First Tier Tribunal.

We have taken the materials in those bundles into account when making this decision.

5. We do find that there is an error of law in this case. The heart of this case is dealt with by Ground 2. The First Tier Tribunal, in relation to the Adult Dependant Relative Rules, states at paragraph 29 of its Judgment:

> "*29. It seems to us that there are two crucial issues in this case but the outcome of the appeal can and is determined by our resolution to only one of them. The questions are:*
>
> *i. What support is needed by this Appellant; is it support that a carer could provide or does it have to be support from a family member?*
>
> *ii. Is the required support available to the Appellant in Malaysia?*"

6. The FTT then goes on to say that the FTT did not consider that they needed to make a decision in relation to the first question and dealt with this at paragraph 31 of the Judgment:

> "*31. We have concluded that from the evidence we heard in this case, it is only necessary to determine the second of these questions. Even if we were to conclude that only the support of a family member would do for this Appellant, if that support can be obtained in Malaysia, then the requirements of the rules (putting aside that she applies in-country) would not be met. It is difficult to see how, if the necessary care is available in her home country, how it could be said to be disproportionate for her to be required to leave. If she has the support of a family member to meet her needs, it is difficult to see how she could not operate on a day to day basis in the country she has lived in her whole life.*"

7. The problem with that approach is that at the heart of this case, the question of what support is needed by the Appellant is the first question that the Tribunal was required to answer. It is not clear why the Tribunal decided not to answer that question because without that assessment of the needs of the Appellant it is impossible to apply the law correctly because there is no factual basis that has been decided upon. The depth and quality of the care required is the first assessment that needs to be undertaken. Without that the other assessments cannot be properly undertaken. This failure to answer their own question impacts the rest of the decision making. It is almost impossible to apply the law complained about in Ground 1 to a set of facts that have not been properly decided upon. The same with Grounds 3 and 4. Therefore, we find an error of law because what the FTT should have done is answer their own questions in full and then made a decision.

8. As a result, we find a material error of law on all Grounds that are pleaded before us. We have considered whether this case should be remitted to the First Tier Tribunal or kept in the Upper Tribunal. Both parties submitted that the proper forum for the discussion of this case was the First Tier Tribunal and we agree. The case requires full re-hearing with factual findings being made before any of the relevant legal tests can be applied to that factual matrix. We therefore find an error of law and remit this case to the First Tier Tribunal for the hearing.

9. For the avoidance of doubt, we would also find Grounds 1, 3 and 4 errors of law, given that we are unable to discern what factual basis the First Tier Tribunal was applying those legal tests to.

Notice of decision

10. The Judge erred materially for the reasons identified. We set aside the decision pursuant to Section 12(2)(a) of the Tribunals Courts and Enforcement Act 2007 (TCE 2007). Bearing in mind the nature and extent of the findings to be made the matter should be remitted to the First-tier Tribunal under section 12(2) (b) (i) of the TCE 2007 and further to 7.2 (b) of the Presidential Practice Statement.

Signed Ben Keith Date 22 March 2023

Deputy Upper Tribunal Judge Ben Keith
Immigration and Asylum Chamber