



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2022-005212

First-tier Tribunal No: HU/55783/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

19th September 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE CHAMBERLAIN

Between

EUGENY PALMER
(ANONYMITY ORDER NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Ms. A. Sepulveda, Fountain Solicitors
For the Respondent: Mrs. R. Arif, Senior Home Office Presenting Officer

Heard at Birmingham Civil Justice Centre on 14 September 2023

DECISION AND REASONS

1. By way of a decision promulgated on 11 August 2023, I set aside the decision of the First-tier Tribunal to be remade.

The hearing

2. The Sponsor attended the hearing. I heard submissions from Ms. Sepulveda and Mrs. Arif following which I allowed the appeal.
3. I have taken into account the documents in the Appellant's bundle provided for the remaking (279 pages).

Remaking

4. There was one agreed issue before me, given the preserved unchallenged finding that long-term personal care in Jamaica would not be affordable (E-ECDR.2.5). That issue was whether as a result of age, illness or disability, the Appellant required "long-term personal care to perform everyday tasks" (E-ECDR.2.4). Appendix FM-SE states at [34] that the evidence that such long-term personal care is required should take the form of independent medical evidence from a doctor or other health professional.
5. For the remaking of this appeal, further evidence was produced. This consists of a medical report from Dr. Andrew Greene, medical practitioner in Kingston, Jamaica, dated 19 February 2023 (pages 271 to 273), a report from Dr. Thomas, Ophthalmology Department, Kingston Public and Victoria Jubilee Hospitals dated 8 February 2023 (page 274), and a second report from Dr. Greene dated 16 July 2023 (pages 278 and 279).
6. I have considered this evidence, which is independent medical evidence from doctors. There was no challenge to the reliability of this evidence from Mrs. Arif, or to the ability of these doctors to produce such reports. Her submission was that this evidence did not show that long-term personal care was required.
7. I find, in reliance on these reports, that the Appellant has severe visual impairment. Dr. Thomas states that she has diagnoses of retinitis pigmentosa, likely glaucoma, left cataract and right pseudophakia. His report states that she has progressive worsening of vision and difficulty with night vision. Dr. Greene physically examined the Appellant on 14 December 2022 and states "her visual acuity was significantly impaired as she was only able to recognise light and count fingers."
8. I find that in addition to significant visual impairment, the Appellant is suffering from vascular dementia as listed in the diagnoses in Dr. Greene's first report. He then states:

"Ms. Palmer has severe medical impairments. The findings of a previous stroke and possible neuro-syphilis diagnosis may be responsible for her current state of dementia. This condition is permanent, and she is not expected to recover, but instead will progressively decline."
9. In his second report Dr. Greene commented on the differences and similarities between vascular dementia and senile dementia, as there had been references to both types of dementia in the evidence before the Tribunal. When describing dementia he states:

"Dementia is a general term used to represent a person's decline in mental abilities and functioning. These mental abilities include memory, thinking, language, judgement, behaviour and mood."

He goes on to describe vascular dementia, and how neuro-syphilis can cause features of vascular dementia, including confusion and memory loss.

10. There was no challenge to the Appellant's diagnoses by Mrs. Arif. I find that the medical evidence before me shows that the Appellant has retinitis pigmentosa and vascular dementia.
11. Ms. Sepulveda submitted that at [63] of the First-tier Tribunal decision the Judge had stated:

"If there had been medical evidence to support the Sponsor's oral evidence that the Appellant suffers from retinitis pigmentosa, which is inoperable, and means that her eyes will continue to deteriorate, I could have accepted that the Appellant requires long-term personal care to perform everyday tasks."
12. Although this finding was not preserved, the Respondent did not cross-appeal by the finding that a diagnosis of retinitis pigmentosa would result in the need for long-term personal care.
13. Turning to the independent medical evidence before me, and specifically with reference to whether the Appellant's diagnoses cause her to require long-term personal care to perform everyday tasks, I find that the evidence of Dr. Greene is clear that this is required. Having described her dementia as permanent, and a condition which will progressively decline, he states:

"Combined with her severe visual impairment, Ms. Palmer is at an extremely high risk of a "fall" and severe physical injury. Her personal care and support are also severely compromised as given her medical condition, nothing less than full "24/7" supervision and care is required."
14. He further states that she is not capable of making any decisions about her welfare, and is incapable of managing her own affairs or completing any administrative duty.
15. I find that the Dr. Greene's evidence shows that the Appellant requires 24/7 supervision and care. I find that it is independent medical evidence that the Appellant needs personal care to perform everyday tasks. Earlier in the report he states that the Appellant's hygiene has been an issue "due to her visual impairment and not remembering where supplies are located within her home", which is evidence that her personal care is being neglected on account of symptoms of her two main diagnoses, poor eyesight and memory problems. He describes her as "generally weak". Her compliance with medication is poor as shown by the fact that her medication has remained unchanged because of her unknown compliance. The Mental State Examination showed "short-term and some long-term memory impairment". He states that she has been found wandering lost on the streets of her community as she had left home and was unable to find her way back. She "verbalises occasionally at times but is much disorientated in place, date and time".
16. Further, I find that Dr. Greene's evidence is that her condition is not going to improve but only decline. Therefore, if she needs round the clock supervision and care now, she is going to need that on an ongoing basis as her health declines.

17. As submitted by Ms. Sepulveda, I find that this evidence is consistent with the evidence from Ms. Barton, who helps the Appellant in Jamaica (pages 66 to 67). In summary, her evidence is that the Appellant has had several accidents at home, is unable to answer her phone, is unable to cook meals, and is in danger when she goes out of the house due to falls and walking into oncoming traffic. I find that this is corroborated by the medical evidence from Dr. Greene that the Appellant needs round the clock care.
18. I find that the Appellant has shown, by provision of specified evidence as set out in Appendix FM-SE, that she needs long-term personal care to perform everyday tasks due to her medical conditions, in particular retinitis pigmentosa and vascular dementia. This being the only outstanding issue, I find that the Appellant meets the requirements of the immigration rules for entry clearance as an adult dependent relative.

Article 8

19. I have considered the Appellant's appeal under Article 8 in accordance with the case of Razgar [2004] UKHL 27. I find that the Appellant has a family life with the Sponsor sufficient to engage the operation of Article 8. It was found in the First-tier Tribunal that the Appellant and Sponsor had family life for the purposes of Article 8, and there was no cross-appeal of this finding. For the reasons set out from [80] to [83], I find that there is family life between the Appellant and Sponsor as there is real, effective and committed support provided by the Sponsor to the Appellant. I find that the decision would interfere with this family life.
20. Continuing the steps set out in Razgar, I find that the proposed interference would be in accordance with the law, as being a regular immigration decision taken by UKBA in accordance with the immigration rules. In terms of proportionality, the Tribunal has to strike a fair balance between the rights of the individual and the interests of the community. The public interest in this case is the preservation of orderly and fair immigration control in the interests of all citizens. Maintaining the integrity of the immigration rules is self-evidently a very important public interest. In practice, this will usually trump the qualified rights of the individual, unless the level of interference is very significant. I find that in this case, the level of interference would be significant and that it would not be proportionate.
21. I have taken into account all of my findings above when considering proportionality. In assessing the public interest I have taken into account section 19 of the Nationality, Immigration and Asylum Act 2002. Section 117B(1) provides that the maintenance of effective immigration controls is in the public interest. I have found above that the Appellant meets the requirements of the immigration rules so there will be no compromise to effective immigration control by allowing her appeal.
22. Following TZ (Pakistan) [2018] EWCA Civ 1109, I find that her appeal falls to be allowed. This case states at [34]:-

"That has the benefit that where a person satisfies the Rules, whether or not by reference to an article 8 informed requirement, then this will be positively determinative of that person's article 8 appeal, provided their case engages article

8(1), for the very reason that it would then be disproportionate for that person to be removed.”

23. In line with this, the headnote to OA and Others (human rights; ‘new matter’; s.120) Nigeria [2019] UKUT 00065 (IAC) states:

“(1) In a human rights appeal under section 82(1)(b) of the Nationality, Immigration and Asylum Act 2002, a finding that a person (P) satisfies the requirements of a particular immigration rule, so as to be entitled to leave to remain, means that (provided Article 8 of the ECHR is engaged), the Secretary of State will not be able to point to the importance of maintaining immigration controls as a factor weighing in favour of the Secretary of State in the proportionality balance, so far as that factor relates to the particular immigration rule that the judge has found to be satisfied.”

24. The Appellant speaks English (117B)(2)). Her application was not refused with reference to the financial requirements and I find that she will be supported financially by the Sponsor (section 117B(3)). Sections 117B(4) to (6) are not relevant.
25. Taking all of the above into account, and placing significant weight on the fact that the Appellant meets the requirements of the immigration rules, I find that the Appellant has shown that the decision is a breach of her rights, and those of the Sponsor, to a family life under Article 8.

Notice of Decision

26. The appeal is allowed on human rights grounds, Article 8. The Appellant meets the requirements of paragraph E-ECDR of the immigration rules.
27. I have not made an anonymity direction.

Kate Chamberlain

Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
17 September 2023