



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM
CHAMBER

Case No: UI-2022-003556
First-tier Tribunal No: HU/55418/2021

THE IMMIGRATION ACTS

Decision & Reasons Issued:

30th January 2024

Before

UPPER TRIBUNAL JUDGE LANE

Between

Maria Elizabeth Jolly

(NO ANONYMITY ORDER MADE)

and

Secretary of State for the Home Department

Appellant

Respondent

Representation:

For the Appellant: Ms Saifolahi
For the Respondent: Mr Tan, Senior Presenting Officer

Heard at Manchester Civil Justice Centre on 18 July 2023

DECISION AND REASONS

1. The appellant, a female citizen of South Africa born in 1950, appeals against a decision of the First-tier Tribunal dismissing her appeal against a decision of the Secretary of State dated 6 August 2021 refusing her leave to enter the United Kingdom under Appendix FM to the Immigration Rules.
2. The relevant parts of HC 395 (as amended) considered in the refusal decision and by the First-tier Tribunal are:

E-ECDR.2.4. The applicant or, if the applicant and their partner are the sponsor's parents or grandparents, the applicant's partner, must as a result of age, illness or disability require long-term personal care to perform everyday tasks.

E-ECDR.2.5. The applicant or, if the applicant and their partner are the sponsor's parents or grandparents, the applicant's partner, 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 person in that country who can reasonably provide it; or

(b) it is not affordable.

3. Granting permission, Designated Judge Shaerf wrote:

The grounds for appeal assert the Judge did not take into account in assessing whether the Appellant might cared for anywhere in South Africa the ability of her daughter and son-inlaw to make any material contribution to the cost at all in the light of information in the Appellant's bundle 4 and the fact that at time of the hearing the Appellant was living temporarily with her sister who was looking to move to smaller accommodation and the Judge did not take account of the appropriateness of the Appellant being close to her sister.

Further, the grounds assert the inconsistency of the evidence whether the Appellant's sister was working or retired referred to at paragraph 25 of the Judge's decision was not put to the Appellant. The Judge's treatment of the Appellant's relationship with her sister was effectively limited to this paragraph and was the basis for the Judge to give little weight to what evidence there was of the Appellant's circumstances in South Africa. It is arguably an error of law to deploy such an inconsistency in the evidence, given the other evidence about the Appellant's mental health, as a basis to give little or no weight to a substantial part of the evidence without giving an opportunity for the inconsistency to be addressed. The grounds disclose arguable errors of law and permission to appeal is granted. All grounds may be advanced.

4. I find that the decision of the First-tier Tribunal is not so flawed in law that it should be set aside. I have reached that conclusion for the following reasons.
5. First, the grounds complain that the judge failed to understand that the sponsor and his wife cannot afford to support the appellant in a care home in South Africa, having a surplus income of only £44.20 after paying their own necessary living expenses. Further, the grounds complain that 'In any event, there has been no assessment of the affordability of care home care and or rental/home care adequately or at all. This evidence has been ignored by the First-tier Tribunal. As such, it matters not whether the cost of care homes provided [A/B 7, 78-97] is limited evidence to the cost of care homes in Pretoria rather than throughout South Africa. This is an error of law.'
6. In response, the respondent in the Rule 24 letter writes: '... this submission fails to engage with the fact that the sponsor currently sends £300pcm to the appellant for 'rent, food, a contribution to bills, travel, medical, and leisure costs' (para 11). The appellant also receives a pension (paras 11 and 12). The

total funds available for the appellant's care are therefore substantially greater than the claimed monthly surplus income of the sponsor.'

7. In a sense, both parties are correct. The judge did not make findings on the evidence provided regarding care homes in Pretoria. Also, and for the reasons given by the respondent, the figures provided by the appellant and sponsor do not appear to be correct. The judge was clear a [20] that she had considered all the evidence irrespective of whether she referred to each item of evidence. Accordingly, I am satisfied that the judge considered the financial ability of the sponsor to fund the appellant's care. However, whether the judge erred by making no or incorrect findings on that issue is immaterial given the more fundamental failure of the appellant to adduce evidence of care provision throughout South Africa as the rules provide (E-ECDR.2.5.). It was not an error by the judge to make no findings on the evidence regarding care homes in Pretoria when that consideration was subsumed by the appellant's wider failure to provide evidence for the whole of South Africa. It was enough for the judge to find that the failure to do that meant that the appellant had not met the requirements of the rules. As the judge wrote at [23]:

In any event it appears the evidence of costings for nursing homes relied on are for homes in Pretoria. Yet the rule requires the unavailability of care/a person to provide it, to be in the country where the appellant lives - not just in Pretoria. No evidence has been provided of the affordability of nursing home providers in other parts of the country, the ability of the State there to assist or the cost/use of paid carers. There is no evidence of the accessibility of such provision in other parts of South Africa and if it is reasonable for the appellant to access it.

8. The judge was right to find that that the rules could not be met. In turn, that finding fed into the Article 8 ECHR consideration; I find that there is no legal error in the judge's analysis of Article 8 and her conclusion at [31].
9. Secondly, Ground 2 asserts that the judge made a finding on a matter which should have been put to the sponsor. At [25], the judge wrote:
10. I also note, whilst the statement of the appellant of 10/02/22 speaks, at paragraph 6, of her sister being unable to care for her long term, for amongst other reasons because she works full time, the letter from the appellant's sister of 25/11/21 says she is retired. This causes me to find, in any event, that I do not have a full and accurate picture of the appellant's circumstances in South Africa.
11. The appellant complains that the claimed inconsistency should have been put to the sponsor. In the Rule 24 letter, the respondent replies:
12. In any event, it is not at all clear how the sponsor would have been able to resolve a discrepancy between the evidence of the appellant on one hand, and that of the appellant's sister on the other had the inconsistency been put. The lack of clarity as to the circumstances of the appellant's sister also answers the point made in the first sentence of para 2.3 of the grounds, regarding the

possibility that the appellant's current accommodation arrangements may only be 'temporary'.

13. I find that I agree with the respondent. Even assuming that the inconsistency had been put to the sponsor, it is difficult to see how the sponsor may have resolved it. In any event, even if this was an error on the part of the judge, the appeal would still have foundered on the failure of the appellant to adduce evidence of care throughout South Africa.
14. In the circumstances, I dismiss the appeal. However, I note that the judge accepted the claimed level of care needed by the appellant [19]. There would appear to be no reasons why the appellant cannot reapply, having regard to shortcomings in the evidence which has been provided hitherto.

Notice of Decision

This appeal is dismissed.

C. N. Lane

Judge of the Upper Tribunal
Immigration and Asylum Chamber

Dated: 22 November 2023