



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-004485
First-tier Tribunal No:
HU/57741/2023
LH/02881/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On the 23rd September 2024

Before

DEPUTY UPPER TRIBUNAL JUDGE WELSH

Between

YOGESWARY ARUDPRAGASAM
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Solanki of Counsel
For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

Heard at Field House on 6 August 2024

DECISION AND REASONS

Introduction

1. This is an appeal against a decision of First-tier Tribunal Judge I D Boyes (“the Judge”), promulgated on 2 September 2023. By that decision, the Judge dismissed the Appellant’s appeal against the decision of the Respondent to refuse her human rights claim.
2. At the Upper Tribunal hearing, the Respondent conceded the appeal. I concluded that the decision is tainted by errors of law and set aside the decision. I now set out my reasons.

Factual background

3. The Appellant is a national of Sri Lanka. She sought leave to enter and remain in the United Kingdom (UK) as an adult dependent relative. In summary, the factual basis of her claim is that she has (i) a diagnosis of dementia coupled with depression and lacks capacity and (ii) needs to be cared for by her daughter who resides in the UK.

The grounds of appeal and grant of permission

4. The grounds plead, in summary, that the Judge erred:
 - (1) in finding that there was an absence of information as to how the Appellant's condition affected her on a day-to-day basis (ground 1);
 - (2) in his approach to the expert report of Dr Halari (ground 2);
 - (3) in making a mistake of fact in relation to the standard of care homes in Sri Lanka;
 - (4) by failing to consider and apply the decision in BritCits v SSHD [2017] EWCA Civ 368.
5. Permission to appeal was granted by Upper Tribunal Judge Lindsley. The grounds upon which permission was granted were not restricted.

Conclusion

6. I concluded that the Judge erred as pleaded, for the following reasons.
7. The Judge stated that "there is a distinct absence of information as to the impact of the conditions on day to day living over a broad period of time so as to be able to show and quantify the extent to which the Appellant needs help vis a vis the extent to which she would like help vis a vis the extent to which the sponsor would like to help" [11B]. There was a such evidence, in the form of the evidence of the Appellant's family and in the report of Dr Halari. If the Judge was of the view that this evidence attracted no weight, then reasons ought to have been given for reaching that conclusion.
8. The reasons given for placing what appears to have been no weight on the report of Dr Halari are inadequate. The Judge stated that Dr Halari "has chosen to adopt a position which is unfortunately not based upon on (sic) any objective and verifiable medical assessment." The Judge reached this conclusion because Dr Halari sought to interview the Appellant but that interview was cut short because the Appellant was unable to communicate properly. The Judge also stated that the conclusions of the expert were undermined by the fact that Dr Halari relied upon the factual account of the family members of the Appellant.
9. The Judge gave no reasons why a dementia sufferer's inability to communicate was not entirely in keeping with the diagnosis or why this lack of communication with the Appellant undermined the conclusions of the expert. Further, no reasons were given why the expert's reliance upon the account of others undermined her conclusions. If the Judge had concluded that the account of the family members was not credible then this may provide a basis but no such finding was made.

10. It is not in dispute that the Judge misunderstood the submission of the then Appellant's counsel in respect of the quality of care homes in Sri Lanka. Of more significance is that the Judge failed to take into account, when assessing the suitability of care in Sri Lanka, relevant evidence, namely the evidence of the Appellant's distress when dealing with people that she did not know.

Notice of Decision

11. The decision of the First-tier Tribunal involved the making of a material error on a point of law and so I set aside the decision.
12. The appeal is remitted to the First-tier Tribunal for a hearing de novo (not before Judge Boyes) with no findings of fact preserved. In reaching this decision, I apply paragraph 7.2 of the Senior President's Practice Statement and take into account the oral submissions of the advocates.

C E Welsh
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber

22 September 2024