IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2024-004607

First-tier Tribunal Nos: HU/57202/2023
LH/03677/2024

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 20 January 2025

Before

UPPER TRIBUNAL JUDGE RIMINGTON
DEPUTY UPPER TRIBUNAL JUDGE F BEACH

Between

MR OSAMUDIAMEN AWO
(NO ANONYMITY ORDER MADE)

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the Appellant: Ms S Saifolahi, Counsel instructed by Legafit Solicitors
For the Respondent: Mrs A Nolan, Senior Home Office Presenting Officer

Heard at Field House on 12th December 2024

DECISION AND REASONS

1. The appellant appeals against the decision of First-tier Tribunal Judge N Clarkson (the judge) who dismissed the appeal on 12th July 2024.

2. The appellant is a national of Nigeria born on 6th April 2003 and who lives in Nigeria and his application for entry clearance to the United Kingdom was refused on 15th May 2023. The appellant suffers with sickle cell anaemia and produced medical evidence for the appeal, in particular two reports dated 9th February 2023 from Dr O Azemobor of the Sickle Cell Centre in Benin and dated 4th September 2023 from the University of Benin Teaching Hospital and information on hospital admissions.

Grounds for Permission to Appeal

3. (i) The grounds set out paragraph E-ECDR.2.4 of the Immigration Rules. It was advanced that at [15], [17] and [24] of the judge's decision she accepted the appellant suffered from sickle cell anaemia and that he was so severely ill that he required hospitalisation and blood transfusions when he experienced a crisis. However, the judge found this did not meet the threshold for E-ECDR.2.4 as the appellant did not experience these crisis periods "approaching half the time".

4. In seeking to make a standardised finding as to how often the appellant experienced the crisis the judge had failed to consider that a crisis could occur at any point in time such is the unpredictable nature of a crisis.

5. Thus the judge had erred in the interpretation and application of E-ECDR.2.4.

6. There could be no doubt that the appellant met the threshold when he experienced a crisis and that he has a condition that is incurable. The threshold set by the Rule requires an appellant to demonstrate they require long-term personal care to perform everyday tasks. The Rule did not specify the frequency of this long-term personal care.

7. Given that first, the appellant experiences crises which can occur at any time for any duration owing to their unpredictable nature and secondly, when there is a crisis the appellant requires long-term personal care to perform everyday tasks, the judge ought to have applied these facts to the Rule.

8. At [17] the judge ought to have found that paragraph E-ECDR.2.4 was met on the basis that when there is a crisis the appellant does require long-term personal care to perform everyday tasks. This was a material error of law.

9. (ii) Further or alternatively, in the assessment of E-ECDR.2.5 at [25] and [28] of the decision the judge found that the appellant's sister could continue to assist the appellant even though she was unhappy about doing so.

10. E-ECDR.2.5 states that

> '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.'

11. The nature of the appellant's condition is such that a flare-up could be experienced at any point and the judge had failed to assess and apply the appellant's sister's witness statement evidence at [7] to [10] and [13] to [14] where it stated she was unable to care for the appellant long-term owing to her circumstances and had experienced difficulties with managing her own family during the periods when the appellant had been hospitalised owing to a crisis. Further, because of the nature of the appellant's illness he would require a carer to be with him all the time owing to the nature of the crisis. These material factors had not been considered or assessed by the judge at all.

12. For the judge to find that the care the appellant's sister could give could continue even though she was unhappy was not supported by the written

evidence and that was a material error of law affecting the assessment of E-ECDR.2.5.

13. Further or alternatively, as outlined at [11] of the decision the adequacy of maintenance was also a live issue in the appeal although the judge found at [29] of the decision that owing to the findings in relation to E-ECDR.2.4 and 2.5 there is no need to make a finding on that issue.

14. (iii) Further or alternatively, the judge's assessment under Article 8 was flawed as the judge failed to make a full and thorough assessment of Article 8 and the judge should have considered the facts within the realm of Article 8 particularly as it was found that family life was engaged. The judge also failed to consider the inability of the appellant's sister to continue caring for the appellant in the balancing exercise and failed to make firm findings about the adequacy of maintenance in the balancing exercise.

Grant of Permission

15. Permission to appeal was refused by the First-tier Tribunal but permission to appeal was granted by Upper Tribunal Judge Ruddick who stated that it was arguable that the judge erred when finding that although the appellant "will require personal care to perform everyday tasks" during periods of "crisis" brought on by sickle cell anaemia, he did not meet the requirements of the Immigration Rules because he only needed personal care for the "minority of the time" [17], and it was arguable that having accepted that the appellant needed personal care as the result of the illness, the judge erred in imposing a requirement that the care be necessary for at least "half the time". Judge Ruddick added it was arguable that the judge erred at [26] in finding that the evidence before her "did not show" that the appellant's sister could not continue to care for him without giving any reasons for rejecting the sister's evidence in this regard. Further, it was arguable that the judge's Article 8 assessment did not take account of the totality of the evidence.

Submissions

16. At the hearing before us Ms Saifolahi relied on the grounds. She submitted that this was an unusual case because the appellant was not constantly in crisis and there were some periods when he was able to get on with his life but the core challenge in relation to ground (i) was whether the judge properly found that the first part of the Rule was not met because he did not require care for more than half the time. There was no timeframe in the Rule such that it was only met at certain unpredictable times. That was the nature of the crisis. Ms Saifolahi accepted that the Immigration Rules were conjunctive but submitted that the assessment of what was reasonable depended on each case. It was not argued in this appeal that when the appellant was not in periods of crisis that he needed care, he was an adult and able to manage but the point was highlighted in the appeal and in the evidence that it was for those periods of time when he was in crisis that he met the Rule. Ms Saifolahi confirmed that the appellant lived with his sister.

17. In relation to ground (ii) once the sponsor had departed in March 2023 the appellant was then in the care of his sister and her evidence was that she did not wish to continue to care for him. Initially Ms Saifolahi submitted that the

appellant needed to be with someone all the time but she did acknowledge the medical report which the judge referred to at [17].

18. The way the appeal was advanced in legal terms was that when the appellant fell into crisis is when he needed the long-term personal care.

19. She also submitted in relation to ground (iii) that the Article 8 assessment was flawed because the judge had failed to take into account the relevant factors as explored above and it was still flawed on the judge's own findings.

20. Mrs Nolan, on behalf of the Entry Clearance Officer, relied on the Rule 24 response and stated that the claim was advanced on the basis that only when the appellant fell into crisis he needed long-term personal care but that was precisely the assessment the judge sought to undertake and that was reflected in [14], [15], [16] and [17]. The judge had accepted that the appellant was severely ill and required personal care but looked at the medical reports and found that he did not require long-term personal care on that basis. Mrs Nolan accepted that the Rule did not specify a "half time" basis but it did specify that as a result the appellant needed long-term personal care and that is what the judge found that the appellant did not need.

21. The judge had taken into account a holistic view of the evidence and her assessment was that the appellant did not meet the requirements of the Rule.

22. In relation to ground (ii) the judge had taken into account the sister's evidence, considered her evidence at [26] but the evidence did not show that she could not continue to do so or to continue to provide a level of care that was burdensome.

23. In relation to ground (iii) the judge did take into account the findings of fact overall and took her findings forward and that was reflected at [31].

Conclusions

24. It is important to read the decision as a whole and to consider the findings of the judge which were not challenged not least those reliant on the actual medical reports. At [14] the judge accepted that the appellant suffered with sickle cell anaemia and that he had required blood transfusions and that this was consistent with the evidence of the witnesses. However, the judge at [15] noted that the appellant had a condition that had enabled him to attend school, complete high school but that *at times* he was unable to carry on day-to-day activities and experienced points of crisis where he had to go to hospital.

25. The judge found that "during periods of crisis" the appellant did require personal care to perform everyday tasks, [17]. That said, the judge cited specifically from the most recent medical report dated 4th September 2023 from the Benin Teaching Hospital which specifically stated that the appellant "has not been severely affected as he has been able to combine his rigorous academic activities with his daily chores". This specifically stated, "He does not require around the clock support" and the judge recorded that the appellant was not expected to get worse but it was appropriate for him to have "ongoing close monitoring". Albeit that the judge made a reference to the period of crisis when the appellant required personal care as not approaching half the time that is not the end of the analysis by the judge. The judge went on to find that "His condition means that intermittently, for short periods, which are the minority of

the time he requires personal care". The judge found at the beginning of [17] when the appellant was so severely ill he would in effect have to have a blood transfusion "and be admitted to hospital". That was not challenged. There was no indication that the appellant would not have care during the period when he was in crisis.

26. E-ECDR.2.4 of the Immigration Rules states that:

> "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".

27. In this instance the two material requirements within the rule are 'long term personal care' and 'to perform everyday tasks'. Immigration rules are not to be construed with all the strictness applicable to the construction of a statute or a statutory instrument and courts and tribunals are encouraged to 'apply sensibly rather than strictly the natural and ordinary meaning of the words which is simply the consequence of keeping in mind the context and purpose of the Immigration Rules'. There should be a 'realistic and unblinkered approach to the application of the relevant provisions to the facts', R (Wang) v Secretary of State [2023] UKSC 21**,** [13]. We accept there is no actual 'half time basis' specified in the rule but the use and juxtaposition of the words 'long-term' and 'everyday' does engage a temporal element. Specifically the adjective 'everyday' describes just that and denotes tasks which are commonplace but which need to be performed everyday and when taken together with the requirement that long-term personal care is needed for the everyday tasks, there is a frequency of occurrence required rather than mere intermittence. That is not the case here as the judge found in reliance on the medical reports. The appellant has a long term condition but the crises are intermittent and transient. That was clear from the evidence. It is important, however, to read this together with the remainder of the judge's findings.

28. Ribeli v Entry Clearance Officer, Pretoria [2018] EWCA Civ 611 at [39] outlined the policy lying behind the changes to the rules in relation to adult dependant relatives ('ADRs') and which was twofold, first to reduce the burden on the taxpayer for the provision of health and social care serves to those ADRs whose needs could be reasonably and adequately met in their own country, and, secondly, to ensure that those ADRs whose needs could only be reasonably and adequately met in the UK were granted fully settled status and access to the NHS. The focus needs to be on the whether the care required by the ADR could be reasonably provided to the required level in the home country. It was underlined in Ribeli at [43] that the test now imposed by the rules is 'a rigorous and demanding test'

29. Each case must be fact sensitive and what is required for the particular appellant; what is clear in this matter is that the judge carefully addressed the care needs of the appellant. The judge went on to consider the level of care when the appellant was not in crisis and when the appellant did not need to be cared for when he was treated with analgesics for pain when necessary.

30. The judge at [19] noted that sickle cell disease was dangerous but recorded that the whole family's evidence was that the appellant received medical

treatment when required and the judge concluded that she had no reason to doubt "the treatment he receives is adequate".

31. Importantly, at [20] the judge found that "The medical evidence does not set out any care needs, either medical or personal for the Appellant", and at [20] the judge appears to reject the mother's evidence that every aspect of the appellant's life needed monitoring because "There is no record of the frequency, pattern or nature of relapses to support the mother's assertion". At [21] the judge found that the appellant had completed high school, he had no learning difficulties and on the evidence before her found that the appellant effectively, when not in crisis, was able to care for himself and monitor the aspects his mother lists, by himself for the majority of the time. Evidently the judge, notwithstanding the acceptance of the sickle cell disease, rejected the mother's evidence as to the severity of the appellant's needs.

32. These were findings made by the judge who considered all the evidence in the round and the judge's assessment was in effect reliant on the medical evidence and, having read the evidence for ourselves, the judge's findings were entirely open to her; there was no error of law in that assessment. The judge's assessment was that during periods of crisis the appellant would be in hospital or receiving blood transfusions, see [17].

33. At [22] the judge again considered the mother's evidence and the extent of the care required but considered the appellant had a level of physical ability in attending school that was indicative "of an ability to attend to his own personal care needs" overall.

34. Additionally at [23] the judge recorded that when the mother was questioned she did not answer the direct question which seemed to indicate that he [the appellant] had only been admitted to hospital once in the past year, and as he had got older the crises had been "less frequent" and this contradicted the mother's written assertion that they had become more frequent without her care. In particular, the judge found that the appellant's mother gave oral evidence that his crises were "rare" and "now not regular as he has grown up". The hospital admission notes were handwritten and effectively illegible but there was no suggestion that the judge had ignored them.

35. The judge clearly considered that the appellant received appropriate care during crises for the minority of time during crises and for the majority of time, that is when not in crisis, was able to monitor and care for himself.

36. Overall it is clear that the judge accepted the sickle cell anaemia and accepted the difficulties during crisis but on sound reasoning did not accept the extent of the crises, noted the hospitalisation and access to clinics and blood transfusions and noted the times when the appellant could care for himself. We find that the threshold as explained in Ribeli was properly applied.

37. It is clear therefore from the decision in relation to ground (i) that the judge did not accept the mother's evidence in terms of the extent of the level of care needed and the judge was unquestionably reliant on the medical reports. That is the context, as found by the judge in approach to E-ECDR.2.5 and the sister's evidence when considering ground (ii).

38. The judge had specifically set out E-ECDR.2.5 at [10] noting that there was a requirement that the applicant "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".

39. Turning to the assessment of the sister's evidence and her provision this therefore needs to be considered in the context of the evidence overall. The statement of the sister who described herself as a 'housewife' specifically says "I love my brother and agreed to look after him and have done so since my mother left".

40. The appellant lived with his sister and at [26] the judge stated this "The fact is that it was clear that the evidence submitted that she did not wish to keep the appellant company for many hours when he was taken to hospital" but bearing in mind the judge found that the appellant by this stage was inevitably in hospital and incidents were rare it was open to the judge to find that the sister could continue to do so bearing in mind she evidently was fond of him. At [16] the sister accepted that she had a responsibility towards her brother and in the circumstances the judge's approach was open to her.

41. The judge specifically found at [28], and it was open to her on the medical reports to do so and following an assessment of the evidence overall, that the crises were infrequent and at worst the appellant was admitted to hospital for a few days.

42. The sister's witness statement at [10] asserted that the appellant 's illness was such that he 'needs his carer to be present all the time'. That was clearly not the case as the judge found. It also appeared to be at odds with the mother's oral evidence. It was thus open to the judge to approach the sister's evidence as she did. The sister in her witness statement advanced that she was unable to provide for the brother who required care on a long-term basis but against the context of the findings of the judge in terms of the number of crises and the extent, the judge was entitled to reject that she could not continue to care for him in a limited way. The judge noted that the sister's evidence where she stated "My brother needs care and support around the clock" because the judge specifically found that that was not reflected in the medical reports. The judge remarked on the sister's observation that the appellant "needs his carer to be present all the time" compared with the medical reports and on sound reasoning the sister's assertions were rejected. It was entirely open to the judge to place greater weight on the medical reports bearing in mind the inconsistency between the witnesses and moreover the medical reports were objective and independent.

43. In relation to ground (iii) and Article 8 the judge specifically stated at [31] that she had taken her findings above into account. We find no error in her approach to those findings and therefore the decision is not flawed on that basis. The judge adopted a balance sheet approach and we find no overall error bearing in mind the tests set out that Razgar **[**2004] HL 27 was cited. Not least as pointed out in the Rule 24 notice provided by the respondent the appellant's skeleton argument before the FtT made no mention of Article 8 and thus criticism of the judge on issues not raised would be contrary to the principles set out in Lata (FtT: principal controversial issues) India [2023] UKUT 163 (IAC).

44. The judge did not materially err in law and the decision shall stand.

Notice of decision

The appeal is dismissed and the decision of the First-tier Tribunal will stand.

Helen Rimington

Judge of the Upper Tribunal
Immigration and Asylum Chamber

20th January 2025