



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: IA/34111/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 29 September 2017**

**Decision & Reasons
Promulgated
On 09 October 2017**

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

**MRS MAGULL ORYAKHIL
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Lay, Counsel instructed by Abbott Solicitors

For the Respondent: Mr P Nath, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal from the decision of First-tier Tribunal Judge Fox promulgated on 27 January 2017. The appellant is a national of Afghanistan. She was born on 9 August 1944 and the subject matter of this appeal is a decision of the respondent made on 30 October 2015 to refuse her further leave to remain.
2. The decision of the First-tier Tribunal runs to some 57 paragraphs and opens with a recitation of the burden and standard of proof in relation to

the issues to be decided. The judge summarises the decision and proceedings, covers the evidence which was received and then summarises the parties' submissions. The appellant was presented by Dr A Van Dellen of Counsel and Mr J Henry appeared as the Home Office Presenting Officer.

3. The findings of the First-tier Tribunal appear at paragraphs 31 and following. Those in relation to medical treatment and medical needs record in clear terms the apparent dissonance between what was reported in a medical report of a Dr Wasu and what was said in evidence by relatives of the appellant. The judge indicates in paragraph 37 that it is reasonable to conclude that the sponsor has attempted to embellish the appellant's circumstances to bolster the appeal.
4. The judge at paragraph 45 turns to consider a letter that was put in evidence which derives from a grandchild of the appellant with whom she was not residing. The judge says this:

"The appellant's family must manage the expectation of their children and it is a private parental matter to address any disappointment that may flow from an unmeritorious application for further leave to remain."

5. At paragraph 47 the judge states:-

"For all the reasons stated there is no reliable evidence to demonstrate significant obstacles to the appellant's reintegration in Afghanistan. The available evidence demonstrates that the appellant has sought to contrive the appearance of infirmity and illness as a barrier to her departure from the UK. The appeal fails in accordance with the Immigration Rules."

6. The judge then deals with a consideration of the appellant's Article 8 rights outside those Rules stating, among other things, at paragraph 49:-

"I do not accept that the appellant has demonstrated family life beyond normal emotional ties with adult family members. The appellant initially represented herself as a visitor upon arrival to the UK. It was subsequently revealed that the appellant was resident in the US, not Afghanistan, before her arrival in the UK."

7. At paragraph 51:

"It is unsustainable to assert that mere age leads to a conclusion of infirmity or incapacitation. The evidence relied upon cannot assist the appellant for the reasons stated above. By the sponsor's own evidence the appellant has family ties to Afghanistan. For the reasons stated above I do not accept the self-serving evidence that those ties are tenuous or unreliable."

8. At paragraph 52:

“If I am wrong to find that no family life exists, any interference with Article 8 ECHR is proportionate to the legitimate aim pursued; economic well-being of the country often expressed as effective immigration control.”

9. Then paragraphs 56 and 57:

[56] Taking the report at its highest it recommends medical treatment for a period of 6 to 8 months. It is reasonable to conclude that an application for leave to remain for private medical treatment may be an appropriate remedy. However there are no exceptional circumstances to warrant reliance upon Article 8 ECHR outside the Immigration Rules.

[57] For completeness I consider the representations relating to the sponsor’s brother which were raised but not pursued. No reliable evidence was provided within the appellant’s bundle to demonstrate a meaningful nexus between the appellant and the sponsor’s brother. When the appellant’s claim of dependence upon the sponsor is considered it is difficult to see how this issue could succeed.”

10. The grounds of appeal as submitted were settled by Counsel who acted in the First-tier Tribunal. Mr Lay, who appears before me today, accepts that they are somewhat lengthy and discursive and he sought very helpfully to put together a skeleton argument which provides a clearer focus and the basis for his oral submissions to me. The thrust of the grounds as originally turned upon the relevant Rule concerning adult dependent relatives (paragraphs E-ECDR.2.4) and the decision in **Britcits [2016] EWHC 956 (Admin)** where an appeal to the Court of Appeal was pending.

11. In granting permission to appeal First-tier Tribunal Judge Macdonald stated:

“it is difficult to follow paragraphs 35 and 36 of the judge’s decision, even when reading Dr Wasu’s report. It is therefore arguable the judge erred in saying that he was unable to rely upon Dr Wasu as an independent, reliable witness and that permission to appeal was granted on all grounds except the ground that the judge should have stayed the appeal.”

12. The particular criticisms of paragraphs 35 and 36 were not pursued by Mr Lay this morning and I think that was a correct exercise of judgment. Those paragraphs may not perhaps be worded as felicitously as they ought, but they are clear and reading the decision holistically there can be no criticism of the judge in the way that he dealt with his factual findings in relation to genuine and exaggerated symptoms.

13. What is said by Mr Lay in his refined submissions is that the judge fell into error in not considering this matter properly under Article 8 outside the Rules. In particular criticism is made for not striking the proper balance as to whether there would be very significant obstacles to the appellant settling back in Afghanistan on return.
14. Though ably argued, I can see no merit in this ground of appeal. The matter was clearly considered by the judge and his conclusions, though briefly expressed, are more than sufficient to be dispositive of the appeal. I have already recited the relevant passages from the First-tier judgment.
15. Mr Lay makes further criticism that the proportionality exercise was flawed by the judge giving no or insufficient regard to the British grandchild resident with the appellant and in relation to whom he says that a family life existed and will continue to exist. Mr Lay concedes that it is not clear precisely how this case was run before the First-tier Tribunal.
16. The First-tier Tribunal Judge dealt with the consideration of private life and family life briefly but adequately. There was nothing wrong in the judge concluding as he did that: "I do not accept that the appellant has demonstrated family life beyond normal emotional ties with adult family members". The burden of proof is such that he who asserts must prove. If the appellant has failed to put sufficient material before the First-tier Tribunal to demonstrate a broader, wider or substantive family life, that is not a matter which, without more, can be reopened and rectified on appeal.
17. In any event at paragraph 52 the judge proceeds to make a proportionality exercise in the alternative on the basis that he was wrong in finding that no family life existed. I fully accept, as does Mr Nath who acts for the Secretary of State, that this matter is dealt with shortly, but in the context of his earlier fact-finding exercise it is more than plain which factors are laid in the balance for the proportionality exercise and why the judge came to the clear conclusion which he did.
18. In the circumstances, having considered the grounds as originally drafted and as recast in the skeleton argument in oral argument, I am satisfied that there is no any error of law in the First-tier Tribunal decision and in those circumstances this appeal must be dismissed.

Notice of Decision

(1)The appeal is dismissed and the decision of the First-tier Tribunal affirmed.

(2)No anonymity direction is made.

Signed *Mark Hill*

Date

9 October 2017

Deputy Upper Tribunal Judge Hill QC