



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

Appeal Number: HU/18701/2018

THE IMMIGRATION ACTS

Heard at Field House

On 25th April 2019

**Decision & Reasons
Promulgated
On 15th May 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS

Between

**MRS EMTETHAL JARABANDA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER - AMMAN

Respondent

Representation:

For the Appellant: Mr A Moran, Legal Representative

For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. The Appellant is a citizen of Syria born on 20th December 1967. On 28th May 2018 the Appellant made an application for entry clearance to the UK under Appendix FM of the Immigration Rules on the basis of her family life with her son Erwa Alsaddi. That application was considered under the

Rules with reference to Article 8 of the European Convention of Human Rights. The Appellant's application was refused by a Notice of Refusal dated 6th August 2018.

2. The Appellant appealed and the appeal came before First-tier Tribunal Judge Cohen sitting at Taylor House on 29th January 2019. In a decision and reasons promulgated on 1st March 2019 the Appellant's appeal was dismissed on human rights grounds.
3. On 8th March 2019 Grounds of Appeal were lodged to the Upper Tribunal. Those grounds contended:-
 - (i) that the Immigration Judge had applied the wrong legal tests;
 - (ii) that the judge had made findings with no proper basis in evidence;
 - (iii) that the judge had failed to consider relevant evidence; and
 - (iv) had reached irrational conclusions.
4. On 26th March 2019 First-tier Tribunal Judge Shimmin granted permission to appeal. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by her instructed legal representative, Mr Moran. Mr Moran is very familiar with this matter. He appeared before the First-tier Tribunal and he is also the author of the Grounds of Appeal. The Secretary of State appears by his Home Office Presenting Officer, Mr Tarlow.

Submissions/Discussions

5. Mr Moran takes me to his Grounds of Appeal. His Grounds of Appeal are quite extensive and his submissions take me through effectively all the relevant paragraphs therein. He notes that the First-tier Tribunal Judge found at paragraph 18 that the Appellant's medical condition was not severe or life threatening and that she had not required long term hospitalisation. He reminds me that the correct test under the Rules relates to "long term personal care with everyday tasks". He submits that the test includes conditions which are not severe or life threatening or require long term hospitalisation, rather than looking to the functional ability of the Appellant to perform everyday tasks such as washing, dressing and cooking, and that there is no indication that the First-tier Tribunal Judge found the Appellant's functional abilities as required. He submits that this in itself amounts to a material error of law.
6. Secondly, he points out that the issue of adequate maintenance was not a matter that was challenged by the Entry Clearance Officer, and consequently the finding by the judge at paragraph 26 that the Appellant's Sponsor is on a low income and had not provided a breakdown of his expenditure and income was not a good reason for the judge concluding that the Appellant's Sponsor had failed to demonstrate he could maintain

the Appellant without recourse to public funds. He points out to me the correct test which is to be found in *KA (Adequacy of maintenance) Pakistan [2006] UKAIT 00065*.

7. His main thrust however relates to the contention that the judge has failed to give full and proper consideration to the medical evidence and to his rejection of the Appellant's medical reports on the basis that they are from the same clinic, from different writers, are not of good quality, and include emotional commentary and unscientific references. He submits that it is an irrational conclusion to reject the medical reports on the basis they are from the same clinic or from different writers, and points out that the quality of the reports have to be looked at in the context of which they are written, i.e. brief reports requested from medical practitioners overseas.
8. He also reminds me that there have been further reports provided by a social support worker who has set out the Appellant's circumstances and personal everyday care needs in some detail and explained how and why her care needs cannot be currently met. He notes that the judge has made no findings in respect of the reports that have been provided and no reasons for rejecting them, merely finding at paragraph 18 "that it is not stated that adequate care is currently unavailable to the Appellant in Syria". Mr Moran goes on to comment that there is clearly inadequate care available in Syria and that this has been set out in some detail in the social care worker's report.
9. Whilst admitting that the threshold is indeed high, he goes on to submit finally that the judge has reached irrational conclusions in finding that the Appellant's health conditions and personal care are not as severe as indicated because her daughter left Syria in 2017, and submits that it is irrational to reach a finding that the Appellant's daughter would not stay with her in a war zone with a 5 year old child instead of joining her refugee husband in the UK. For all these reasons he submits that the findings of the First-tier Tribunal Judge contain a substantial number of material errors of law and he asked me to set aside the decision.
10. In brief submission, Mr Tarlow points out that whilst there may well be an error set out by the judge as to the exact detail of the Appellant's medical condition, the fact is that the judge has made a finding that her conditions are not life threatening and that the judge was entitled to make the findings that he has overall. He submits that the findings made by the judge are ones that the judge was entitled to make particularly bearing in mind that the judge heard the evidence, including the judge's finding with regard to the medical reports.

The Law

11. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational

conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

12. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

Findings on Error of Law

13. There was before the judge evidence produced by the Appellant's Sponsor and a substantial bundle of documentation. To suggest that the judge's findings are irrational requires an extremely high threshold. The main thrust of the argument made on this point turns on the fact that the judge considered that it was irrational for the Appellant's daughter to leave her mother in Syria. That is too high a threshold to impose. The daughter was given the opportunity with her young child to join her refugee husband in the UK and from all that has happened in Syria and the living in a war zone, whilst I am sure it was painful for her to leave her mother behind, it does not in my view create a scenario that would make the decision irrational.
14. I have addressed that first because that is only the most minor of issues that are raised by Mr Moran. His main thrust is to rely on a series of medical reports produced in the Appellant's bundle from doctors in Syria specialising in psychiatry, addiction therapy and neurosurgery. I acknowledge that those reports are written in letter format and are not set out in the manner in which a medical report for a piece of litigation in the UK would normally be expected. However, they have to be looked at in the context of which they were written and I accept the submission made by Mr Moran that the judge has failed to consider and assess the Appellant's particular documented conditions such as sacral nerve root pain relating to a herniated disc, and the reports on the assessment of her mental health including that of her psychiatric and cognitive behaviour. As such, I am satisfied that the approach adopted by the judge errs in law and that it is material.

15. Finally, Mr Moran is correct in his definition of the legal test to be carried out and certainly in this matter, the judge appears to have given weight to the inability of the Sponsor to produce documentation relating to his financial circumstances in a situation where the Secretary of State had previously seemingly not sought to challenge this.
16. For all the above reasons I am satisfied that there are errors of law in the decision of the First-tier Tribunal Judge which materially taint his conclusions and as such, I set aside the decision of the First-tier Tribunal and remit the matter back to be reheard.

Decision and Directions

The decision of the First-tier Tribunal Judge contains material errors of law and is set aside. Directions are given hereinafter for the rehearing of this matter.

- (1) That on finding there are material errors of law in the decision of the First-tier Tribunal Judge the decision is set aside with none of the findings of fact to stand.
- (2) The matter is remitted back to the First-tier Tribunal sitting at Taylor House on the first available date 28 days hence with an ELH of two hours.
- (3) That the rehearing is to be before any Judge of the First-tier Tribunal other than Immigration Judge Cohen.
- (4) That there be leave to either party to file and serve an up-to-date bundle of such subjective and/or objective evidence upon which they seek to rely within at least seven days prior to the restored hearing.
- (5) That the listing of the appeal be expedited.
- (6) That an Arabic - Middle Eastern - interpreter do attend the restored hearing.

No anonymity direction is made.

Signed

Date 10 May 2019

Deputy Upper Tribunal Judge D N Harris

TO THE RESPONDENT FEE AWARD

No application is made for a fee award and none is made.

Signed

Date 10 May 2019

Deputy Upper Tribunal Judge D N Harris