IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-003974

First-tier Tribunal No: HU/55838/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:

On 8th of December 2023

Before

UPPER TRIBUNAL JUDGE HANSON
DEPUTY UPPER TRIBUNAL JUDGE MAHMOOD

Between

KARUNAWATHIE HETTIARACHCHIGE
(NO ANONYMITY ORDER MADE)

Appellant

and

AN ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the Appellant: Mr Nasir, Instructed by Chris Raja Solicitors.
For the Respondent: Mr Tan, a Senior Home Office Presenting Officer.

Heard at Manchester Civil Justice Centre on 22 November 2023

DECISION AND REASONS

1. At the conclusion of the hearing before us on 22 November 2023 we announced our decision to dismiss the appeal. We now give our reasons.
2. The appellant appeals with permission a decision of First-tier Tribunal Judge Hollings-Tennant ('the Judge'), promulgated following a hearing in Manchester on 25 April 2023, in which the Judge dismissed her appeal against the refusal of an application for leave to enter the UK as an adult dependent relative of a person present and settled in the United Kingdom under Appendix FM of the Immigration Rules.
3. The appellant is a female citizen of Sri Lanka born on 4 February 1951. On 28th February 2022 she applied for entry clearance to join her daughter, Mrs Asanka Niroshanie Dodangoda ('the Sponsor'), who is a British citizen. The application was refused in a decision dated 11 August 2022.
4. No issue was taken in the refusal notice in relation to the claimed relationship between the appellant and Sponsor or the Sponsor's ability to provide adequate maintenance and accommodation for her mother. The application was refused as the Entry Clearance Officer (ECO) did not accept there was sufficient evidence to demonstrate the appellant needed long-term personal care to

perform everyday tasks as a result of age, illness, or disability. Therefore it was stated she could not meet the relevant requirements to qualify as an adult dependent relative under paragraph E-ECDR.2.4 of Appendix FM.

5. The ECO also contended the appellant had failed to demonstrate she was unable to obtain the required level of health care in Sri Lanka given that letters had been provided from healthcare professionals to confirm she was receiving required care and medication, leading to it being found she could not meet the requirements of paragraph E-ECDR.2.5 of Appendix FM.
6. Having considered the documentary and oral evidence the Judge sets out his findings of fact from [12] of the decision under challenge.
7. At [13] the Judge notes the claim is based on an assertion the appellant requires long-term personal care to perform everyday tasks because she is 72 years of age and her health deteriorated after she suffered an acute ischemic stroke in May 2020 and now suffers from a number of health conditions.
8. At [14] the Judge finds the medical evidence produced in support of the claim was somewhat limited. The Judge made specific reference to a letter from Dr Abeywickrema dated 14 February 2022 who states the appellant is under severe stress because she anticipates being left alone without family support and is finding it difficult to cope with daily household work due to being left alone. The Judge expresses surprise that as the doctor has been the appellant's doctor for some eight years the letter did not provide details with regard to the stroke she is said to have suffered in May 2020 and any mobility issues arising. The Judge therefore placed limited weight on the same as corroboration of the claim and found the lack of detailed reference to ongoing care needs and health conditions undermined the extent to which the document can be relied upon as providing an accurate picture of daily care requirements.
9. At [15] the Judge refers to a letter dated 29 November 2022 from a Consultant Neurologist which provided some information with regard to the impact of the appellant having suffered a stroke in May 2020. The Judge notes reference to slurring of speech and loss of balance and the appellant being started on medical treatment. The Judge notes the opinion of the Consultant that if the appellant stays in her current environment there is a risk of recurrent strokes and further functional disabilities which may result in her becoming more dependent. The Judge accepted the letter indicated the appellant is in need of medication but did not accept the letter suggested the appellant required long-term care to perform everyday tasks, but rather that there was a need to ensure that she took her medication.
10. At [16] the Judge refers to additional evidence in the form of a handwritten letter from a Dr Somaratna dated 29 November 2022, who claims to be in the appellant's GP since February 2022 following a request from relatives. The Judge found the letter provided limited details of the appellant's physical care needs and that it was not clear why the doctor suggested the appellant would not receive adequate individual attention in a care home and finds the letter had been written to support the claim made, particularly given the reference to it being a travesty of justice if the appellant cannot join her daughter, rather than containing independent medical evidence focusing upon her specific health requirements.
11. The Judge refers to consideration of the appellant's mental health at [17] noting a letter from a psychological counsellor dated 30 November 2022. The Judge concludes the evidence suggests that when the appellant needs support in respect of her mental health she is able to attend counselling and is physically able to make her way to appointments.
12. At [19] the Judge refers to the appellant's visa application form in which she referred to her desire to live with her daughter in the UK as she feels lonely and

vulnerable as the daughter-in-law is planning to move on with her life, and that while she makes brief reference to her deteriorating physical health, she provides no specific details in relation to the same and states it is mainly her mental health that is suffering because she does not want to live alone. There was no reference in the application form to the appellant suffering abuse at the hands of relatives in Sri Lanka or that she requires long-term personal care to perform everyday tasks. At [21] the Judge records not being satisfied the appellant had discharged the burden of proof upon her to demonstrate she met the requirements of paragraph E-ECDR.2.4 of Appendix FM. The Judge also finds that the appellant and Sponsor to some extent exaggerated the extent of her physical health concerns and finds the application is more about the appellant feeling elderly and lonely in Sri Lanka and wishing to join her daughter in the UK rather than the need for long-term care to perform everyday tasks.

13. In the alternative the Judge goes on to consider the question of the provision of care in Sri Lanka from [22]. Having analysed the written evidence, oral evidence and submissions, the Judge concludes at [27] that the appellant had not provided sufficient evidence to demonstrate that appropriate level of care is not reasonably available to her in Sri Lanka either through family members or in an appropriate care home. It had not been established such care was not affordable, particularly bearing in mind the care and financial support the appellant currently receives. The Judge finds the appellant had not demonstrated she met the requirements of E-ECDR.2.5.
14. The Judge then went on to consider Article 8 ECHR from [28]. The Judge accepts there is regular contact between the appellant and her daughter in the UK who also provides some financial support, although the Judge does express concerns about the lack of documentary evidence relating to financial circumstances.
15. Having analysed the nature of the relationship the Judge finds at [31] that Article 8 (1) is not engaged as there was no family life within the meaning of Article 8 as the ties did not go beyond normal emotional ties as may be expected between an adult daughter and an elderly parent.
16. In the alternative, from [32], the Judge considers the position as if Article 8(1) is engaged, concluding that the decision is proportionate for the reasons set out in the determination.
17. The appellant sought permission to appeal on five grounds. Ground 1 asserts procedural unfairness, Ground 2 asserts the Judge erred by relying on issues not raised in the Refusal Letter, Ground 3 asserts the Judge erred in relation to evidence and care requirements, Ground 4 that the Judge erred in failing to take account of provision of care in Sri Lanka and the emotional needs of the appellant when considering the provision of care, and, Ground 5 that the Judge erred in the assessment of Article 8 ECHR in finding it was not engaged as such finding is perverse and irrational.
18. Permission to appeal was granted by another judge the First-tier Tribunal on 19 September 2023, the operative part of the grant being in the following terms:

> 2. The grounds assert that the Judge erred in relying upon the submissions made which were not founded in the evidence. It is claimed a number of such matters were occasioned and Counsel for the appellant raised a number of concerns about the submissions which, she claims, seem to have not been heard by the Learned Judge. I understand a transcript has been requested.
> 3. There are a number of other grounds dealing with specifics of the judgment.
> 4. I will grant permission on ground 1. Counsel has raised concerns which on the face of matters is concerning and it is arguable that the Judge has fallen into error in both the approach taken in the hearing and the judgment.
> 5. I will grant permission on the remainder of the grounds for completeness.

19. The Secretary of State opposed the application in a Rule 24 response dated 27 September 2023, in which it is written:.

> 2. The respondent opposes the appellant's appeal. In summary, the respondent will submit inter alia that the judge of the First-tier Tribunal directed himself appropriately.
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> 3. The FTTJ has provided a detailed and well-reasoned consideration of the evidence. At [18] the FTTJ sets out the failure of the medical evidence to meet the requirements set out in the Rules with reference to FM-SE in establishing that the needs care to perform everyday tasks. Para 35 of FM-SE states:
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> > 34. Evidence that, as a result of age, illness or disability, the applicant requires long-term personal care should take the form of:
> >
> > (a) Independent medical evidence that the applicant's physical or mental condition means that they cannot perform everyday tasks; and
> > (b) This must be from a doctor or other health professional.
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> 4. The grounds are misconceived (Ground 3) in arguing that there is no requirement for medical evidence to support a claim of long term care.
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> 5. Likewise, at [20] the FTTJ provides reasons with reference to the evidence of the sponsor that the A is capable of looking after herself for the majority of the week and is independently mobile. Simply put, the burden had not been discharged [21], and the FTTJ was entitled to note the exaggeration in the evidence relied upon [21].
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> 6. The FTTJ afforded weight to the medical evidence on a rational basis, and was entitled to note the deficiencies and omissions as set out. Any argument (para 12 of grounds) as to the level of care in the country is not material to the consideration under E-ECDR.2.4 since that relates to establishing that the A requires long term care due to medical conditions. Having failed to meet E-ECDR.2.4 the FTTJ was not obliged to consider the conjunctive rule E-ECDR.2.5 but did so nonetheless.
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> 7. There can be no issue of unfairness in the FTTJ establishing the issues in the case. Given the Tribunal had to deal with the matter on a Human Rights basis, it was relevant to establish if the PO accepted that Article 8 was engaged. Likewise there is no issue of unfairness in the A not being aware of the subsidiary requirements under Appendix FM-SE. The A was represented throughout proceedings and should have been aware of the requirements of the rules.
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> 8. As to the provision of care issue, as highlighted by the FTTJ at [25] it was for the A to adduce evidence as required and detailed within Appendix FM-SE para 35 that the requisite care was not available in Sri Lanka, such evidence being required from a central or local authority or doctor/health professional. The evidence relied upon simply did not meet this requirement, not least for the credibility issues highlighted by the FTTJ. Any reference to the CPIN is not material as indicated by the FTTJ, given the A failed to adduce evidence as to the unavailability of appropriate care. On the contrary the evidence relied on by the A demonstrated that there was adequate medical provision.
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> 9. As to points raised in Ground 1- it is at this point unclear where the issue of unfairness lies in the FTTJ noting the absence of bank statements relating to the A to establish her financial circumstances. This was an item not within the evidence, and the record of proceedings accessed in drafting this response shows the following question asked:
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> Evidence? Why have you not provided the appellants bank account?

- I have not been asked to provide any of it in the application.

10. The FTTJ was entitled to have reservations on the evidence given as to the family circumstances in Sri Lanka for the reasons given.

11. With regards to Article 8, the FTTJ has conducted an assessment in the alternative and adequate reasons are given for finding that the public interest had not been outweighed given the failure to meet the Rules.

Discussion and analysis

20. Ground 1 asserts procedural unfairness referring to Counsel for the appellant strongly objecting to the Presenting Officers submissions.
21. The purpose of submissions is to establish an individual's case and what they aim to achieve which can be based upon a skeleton argument or notes prepared in advance of a hearing. Whether the submissions made were of relevance or advanced the case any further was a matter for the Judge to decide. The suggestion in the grounds that the submissions raised issues which had not been put to the sponsor to give her an opportunity to answer is not made out. Specific reference to the issue of money remittances is clearly a matter which was raised and specifically put to the sponsor as noted in the Rule 24 response.
22. It was not made out there is anything in the determination under challenge relating to an issue which should have been but was not put to the Sponsor or the representative to enable a response to be given, sufficient to amount to procedural unfairness.
23. Although the Grounds refer to a transcript of the proceedings no transcript was provided. Without a transcript we are unable to see how this ground of appeal can be advanced further. In any event, even if the respondent had referred to matters in closing submissions, the burden of proof remained with the appellant to deal with each part of the Immigration Rules which applied to satisfy the Judge and to deal with how it was contended that Article 8 ECHR was engaged and met.
24. It is also asserted the Judge erred as he relied upon submissions made by the Presenting Officer. If this is a suggestion the submissions were all the Judge relied upon, such claim has no merit. The Judge clearly considered the evidence holistically and made findings in relation to the evidence supported by adequate reasons.
25. It is important when reading the determination to focus on the purpose for which the application was made, the context. The appellant applied as an adult dependent relative under Appendix FM. That was the primary issue being considered by the Judge.
26. The challenge at Ground 2 that the Judge raised issues which had not been relied upon in the refusal letter and in asking whether Article 8 was engaged, is without merit. There is no appeal under the immigration rules and so the appeal was on human rights grounds. Consideration of whether the appellant could meet the immigration rules was the proper starting point, as if she could it could not be argued it was proportionate to exclude her from the UK. Article 8 ECHR is, in any event, raised in the appellant's representative's skeleton argument filed for the purposes of the hearing. Article 8 was therefore an issue at large. No unfairness is made out.
27. Similarly, at [8] of the Grounds, the challenge to the Judge relying upon paragraph 35 of Appendix FM – SE and the claim of procedural unfairness is that was not an issue raised in the refusal letter is without merit. The issue in the appeal was whether the appellant had established on the evidence an

entitlement for leave to enter as an adult dependent relative. One of the matters to be considered was whether she required care to perform everyday tasks. Appendix FM – SE sets out the specified evidence required to establish this fact. The appellant was represented both in relation to the preparation of the appeal and by experienced counsel at the hearing. They are deemed to have knowledge of the applicable legal provisions. This provision is not a new provision. It stated:

34. Evidence that, as a result of age, illness or disability, the applicant requires long-term personal care should take the form of:

(a) Independent medical evidence that the applicant's physical or mental condition means that they cannot perform everyday tasks; and
(b) This must be from a doctor or other health professional.

28. If the Judge is being challenged for applying the law and guidance, such claim is totally without merit. Similarly even if the UK-based sponsor or others set out the appellant's situation in their witness statements, the specified evidence provision requires such material to come from a doctor or other health professional.
29. In any event, the Judge was entitled to look to the Immigration Rule itself to satisfy himself that each part had been met by the appellant. It would have been an error of law for the Judge to not look at each component of the relevant rule.
30. Ground 3 and 4. Ground 3 asserts the Judge erred at [21] claiming that E-ECDR.2.4 did not require the provision of medical evidence to support a claim of long-term care. This ground is misconceived as clearly such evidence is required. The adult dependent relative provisions in general terms require a UK sponsor to show that there adult relative overseas requires long-term personal care to perform everyday tasks due to age, illness or disability, and, that care is not available or affordable in the country where they are living. The evidence required to prove that is set out in Appendix FM – SE. As the Judge said at paragraph 25 of his decision, the appellant was missing the point because it was for the appellant to show that she cannot obtain the required level of care in Sri Lanka.
31. The Ground asserting the Judge did not consider the evidence properly or considered it in isolation is without merit. The judge was aware of and considered the medical evidence to which there is specific reference. The medical evidence was specifically considered and evaluated at paragraphs 14, (that of Dr Abeywickrema) at paragraph 15 (that of Dr Riffsy) and at paragraph 16 (that of Dr Somartana). In addition at paragraph 17 the Judge also considered the letter of Chamalee Ahanama, a psychological counsellor, relating to the Appellant's mental health.
32. The Judge did not fail to take into account and to give due weight to the appellant's skeleton argument and to the Court of Appeal's decision in R (BritCits) v SSHD [2017] EWCA Civ 368 because he referred to the case specifically and applied it. There is specific reference at paragraphs 28 and 33 of the judgment.
33. The fact the appellant disagrees with the Judges assessment does not mean the evidence was not considered.
34. The assertion in the grounds that the Judge failed to consider the emotional impact upon the appellant is without merit. The Judge considered the evidence that was provided with the required degree of anxious scrutiny including that relating to physical or emotional issues. The Judge's finding that there was nothing in the evidence to warrant the appeal being allowed means there was

insufficient evidence to establish that the emotional aspects meant that it was unreasonable for the appellant to make use of the care that is available in Sri Lanka.

35. We find no merit in the challenge to the decision of the Judge that the appellant could not succeed under the immigration rules on the basis of the evidence before him.
36. The Judge went on to consider Article 8 ECHR with the primary finding being that the appellant had not established that Article 8 was engaged. Ground 5 asserts that finding is fundamentally flawed as there was unchallenged evidence of financial support and emotional dependency. That is not disputed by the Judge but that in itself does not establish family life recognised by Article 8. The Judge does not find that de facto family life does not exist but that is not the same as family life recognised under the ECHR. The Judge gives adequate reasons for why the evidence did not establish the required degree of dependency between the appellant and the sponsor, sufficient to warrant a finding that Article 8 family life is engaged. That finding is neither perverse nor irrational and is in accordance with the assessment of the facts and application of the law. It is a finding open to the Judge on the evidence.
37. Although the grounds challenge the proportionality assessment that is not arguably relevant as it was not found that Article 8 is engaged.
38. In any event the Judge did consider in the alternative whether the appeal could succeed under Article 8 and concluded it could not. There was nothing arising from the background to this out of country appeal which could have led to the appeal succeeding, even if Article 8 was engaged. There is no material error of law in the assessment of Article 8 ECHR.
39. Therefore whilst we sympathise with the appellant's health and the situation in which the Sponsor finds herself in, we are unable to discern any material of error of law in the Judge's decision.
40. Having considered the evidence, determination, and submissions made, we find the appellant has not established legal error material to the decision to dismiss the appeal.

Notice of Decision

41. There is no legal error material to the decision of the First-tier Tribunal. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

27 November 2023