Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/17414/2018**

THE IMMIGRATION ACTS

Heard at Field House **Decision & Reasons Promulgated**
On April 8, 2019 **On April 16, 2019**

Before

DEPUTY UPPER TRIBUNAL JUDGE ALIS

Between

THE ENTRY CLEARANCE MANAGER

Appellant

and

MRS MARIAM ABDULBAKI
(NO ANONYMITY DIRECTION MADE)

Respondent

Representation:

For the Appellant: Mr Avery, Senior Home Office Presenting Officer
For the Respondent: Mr Moran, Solicitor

DECISION AND REASONS

1. Whilst the respondent is the appellant in these proceedings before me, I hereafter refer to the parties using terminology used in the First-tier Tribunal. The appellant in the First-tier Tribunal will hereafter be referred to as "the appellant" in these proceedings, and the respondent will be referred to as "the respondent".

2. The appellant, a Syrian national, applied for entry clearance to the United Kingdom on May 9, 2018 based on her family life with her son. The respondent refused her application on August 6, 2018 because she did not meet the requirements of Sections E-ECDR 2.4 and 2.5 of Appendix FM of the Immigration Rules.

3. Th appellant appealed this decision on August 20, 2018 under section 82(1) of the Nationality, Immigration and Asylum Act 2002. The entry clearance manager reviewed the decision on October 17, 2018 but upheld the decision.

© CROWN COPYRIGHT 2019

4. Her appeal came before Judge of the First-tier Tribunal Buckwell on January 3, 2019 and in a decision promulgated on January 24, 2019, her appeal was allowed under article 8 ECHR on the basis she satisfied the Immigration Rules.

5. The respondent appealed this decision February 6, 2019 and although Judge of the First-tier Tribunal O'Brien refused permission on February 21, 2019 Upper Tribunal Judge Perkins granted permission to appeal finding it arguable the Judge erred and in particular by finding the appellant met the Rules even though no expert evidence was adduced.

6. A response purporting to be a Rule 24 response was lodged in April 3, 2019. In it, the appellant submitted there was no error in law because:

   (a) The FTT Judge's failure to refer to the legal test, in cases of this nature, as being a "rigorous and demanding test" was not an error in law.
   (b) She disputed there was no independent medical evidence referring firstly, to the medical evidence at pages 84-107; secondly, the journal articles and thirdly, statements from the sponsor and the appellant's carer.
   (c) It was wrong in law to say there would be an increased strain on the NHS.
   (d) The respondent had never raised the use of the sponsor's benefits to support the appellant and the only issue was whether there were adequate funds available.
   (e) There was no trite law that said there was no family life between adult family members living in different countries as per Singh v SSHD [2015] EWCA Civ 630

7. No anonymity direction is made.

SUBMISSIONS

8. Mr Avery submitted there was an error in law for the reasons set out in the grounds of appeal upon which permission to appeal had been given. The Judge had to decide if she was capable of looking after herself or whether there was assistance in her home country to meet her medical requirements. If care was available, then the appellant could not satisfy paragraph E-ECDR 2.5 of Appendix FM of the Immigration Rules and the Judge erred by so finding. The fact the family wanted to look after her was insufficient in light of the guidance provided by the Court of Appeal in Briticis v SSHD [2017] EWCA Civ 368 and Ribeli v ECO [2018] EWCA Civ 611. It was submitted the Judge erred by allowing the appeal without independent evidence and relied on the evidence of the sponsor and a carer in Jordan.

9. When considering the appellant's claim outside the Rules, Mr Avery submitted the Judge erred in the approach to family life and proportionality. No weight was attached to the adverse effect on the public purse and the Judge simply allowed the decision because the Rules were met. The decision should be set aside and remade.

10. Mr Moran relied on the Rule 24 response and invited the Tribunal to uphold the decision. When considering the Immigration Rules, the Judge placed weight on the

medical evidence as evidenced in paragraph 71 of the decision and he disputed the respondent's claim there was no medical evidence upon which the decision was made and he referred to the Tribunal to the medical evidence that was contained in the appellant's bundle from page 84 onwards.

11. He submitted that the Judge properly considered paragraphs E-ECDR 2.4 and 2.5 along with paragraphs 34 and 35 of Appendix FM-SE of the Immigration Rules. He disputed the only evidence of her medical condition came from a neighbour and sponsor and argued the Judge correctly accepted the evidence submitted met the requirements of paragraph 34 of Appendix FM-SE of the Immigration Rules and that there was evidence from a central or local health authority which satisfied paragraph 35 of Appendix FM-SE of the Immigration Rules. The Judge also had regard to articles contained in the bundle which supported his claim there was a lack of care facilities for a refugee in Jordan.

12. He argued the Judge engaged with the decisions of Briticis and Ribeli and concluded at paragraph 75 that it was unreasonable to expect anyone to provide the kind of care needed.

FINDINGS

13. The appellant submitted an application for entry clearance as the adult dependant of a person settled in the United Kingdom. Both the respondent and Judge identified the correct legislation to consider this appeal under was Section EC-DR of Appendix FM of the Immigration Rules.

14. The respondent refused the application because he argued the appellant did not satisfy Section EC-DR1.1(d) which required the appellant to demonstrate she met all of the requirements of Section E-ECDR: Eligibility for entry clearance as an adult dependent relative.

15. Reliance was placed on Appendix FM-SE (paragraphs 34 and 35) which required:

> "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.
>
> 35. Independent evidence that the applicant is unable, even with the practical and financial help of the sponsor in the UK, to obtain the required level of care in the country where they are living should be from:
>
> (a) a central or local health authority;
>
> (b) a local authority; or
>
> (c) a doctor or other health professional."

16. In refusing the application, the respondent argued that the appellant had not satisfied paragraphs E-ECDR 2.4 or 2.5 of Appendix FM of the Immigration Rules.

17. By the time the appeal came before the Tribunal, the appellant's representatives had submitted a detailed bundle of evidence which they argued addressed the concerns raised in the decision letter. It was therefore argued the Immigration Rule was met and the appeal should be allowed under article 8 ECHR.

18. Mr Avery argued the evidence did not satisfy the requirements of Appendix FM_SE or the guidance issued by the Court of Appeal in the cases of Briticis and Ribeli. The bundle of documents that was before the First-tier Tribunal included various statements from the appellant's UK sponsor, her son and her neighbour. The bundle submitted to the respondent included various medical reports and an article about the neglected health needs of older Syrian refugees in Jordan.

19. The Court of Appeal in Britcits stated at paragraph 59 -

> "First, the policy intended to be implemented by the new ADR Rules, as appears from the evidence, the new ADR Rules themselves and the Guidance, and confirmed in the oral submissions of Mr Neil Sheldon, counsel for the SoS, is clear enough. It is twofold: firstly, to reduce the burden on the taxpayer for the provision of health and social care services to those ADRs whose needs can reasonably and adequately be met in their home country; and, secondly, to ensure that those ADRs whose needs can only be reasonably and adequately met in the UK are granted fully settled status and full access to the NHS and social care provided by local authorities. The latter is intended to avoid disparity between ADRs depending on their wealth and to avoid precariousness of status occasioned by changes in the financial circumstances of ADRs once settled here."

20. The Court of Appeal emphasised that the court must consider (a) whether the provision of health and social care services could reasonably and adequately be met in their home country and (b) where their needs could only be met in the United Kingdom that the appellant should be granted fully settled status and full access to the NHS and any social care available with the local authority.

21. The main challenge brought by Mr Avery centred on the requirement set out in paragraphs 34 and 35 of Appendix FM-SE of the Immigration Rules. There were a number of letters outlining her condition contained within the bundle, but these documents did not say she was unable, even with the practical and financial help of the sponsor in the UK, to obtain the required level of care in the country. Reliance for this was based on the article contained at pages 125-128 of the bundle. This was an article on displaced Syrians.

22. However, the evidence adduced by the appellant suggested that she had been able to access health care as evidenced by the numerous reports contained in the bundle. Rather than supporting her claim to be unable to access treatment they supported the argument advanced by the respondent when this appeal came before the First-tier Judge. Mr Avery sought to persuade me that in such circumstances the Judge had erred. Mr Moran argued the Judge correctly attached weight to the fact the appellant was a refugee in Jordan and had no residence rights there and pointed to the fact that she was currently cared for by a neighbour, but this could not last indefinitely.

23. Paragraph E-ECDR 2.5 of Appendix FM of the Immigration Rules makes clear that she must be unable, even with the practical and financial help of the sponsor, to obtain the required level of care in the country where she is 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.

24. The Judge was satisfied her medical condition was worsening and gave reasons for this in paragraph 71 of his decision. The witness statements supported the medical views expressed and the respondent's representative in the First-tier Tribunal did not challenge that evidence.

25. The Judge went on to carefully analyse the appellant's medical condition and concluded that although she currently had support from a neighbour it was not reasonable to expect this care to continue.

26. I am satisfied that the Judge did consider the Immigration Rules and having identified medical evidence (required by the Rules) then proceeded to apply the tests set out by the Court of Appeal in Briticis.

27. He considered whether the provision of health and social care services could reasonably and adequately be met in their home country and (b) where their needs could only be met in the United Kingdom.

28. The Judge concluded that the provision of health and social care services could not be provided in Syria (her home country) and also concluded that the provision of health and social care services was also not available in Jordan. He accepted they could be met in the United Kingdom and if that meant at the expense of the NHS then so be it. The Court of Appeal made it clear that a lack of finance did not mean a person could not succeed.

29. Having made findings that were open to him the Judge was entitled to conclude the Immigration Rules were met and following the decision in TZ (Pakistan) and PG (India) [2018] EWCA Civ 1109 had to allow the appeal under article 8 ECHR.

30. There was no error in law.

DECISION

31. There was no material error in law and I uphold the decision.

Signed Date 12/04/2019

Deputy Upper Tribunal Judge Alis

<u>TO THE RESPONDENT</u>
<u>FEE AWARD</u>

I do not make a fee award because none was made in the First-tier Tribunal.

Signed Date 12/04/2019

Deputy Upper Tribunal Judge Alis