IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No.: UI-2023-001613

First-tier Tribunal Nos: HU/54510/2022
LH/00124/2023

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 15 August 2023

Before

DEPUTY UPPER TRIBUNAL JUDGE MONSON

Between

VALENTINA SANGADZHIEVA
(ANONYMITY ORDER NOT MADE)

Appellant

and
ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the Appellant: Mr Taimour Lay, Counsel
For the Respondent: Ms Julie Isherwood, Senior Home Office Presenting Officer

Heard at Field House via Teams on 24 July 2023

DECISION AND REASONS

1. The appellant appeals against the decision of First-tier Tribunal Judge Parkes promulgated on 9 March 2023 ("the Decision"). By the Decision, Judge Parkes dismissed the appellant's appeal against the decision of the respondent made on 27 June 2022 to refuse the appellant's application for entry clearance as an adult dependent relative on the ground that the requirements set out in Appendix FM were not met.

Relevant Background

2. The appellant is a national of Russia, whose date of birth is 22 January 1942.

3. The application was refused on the ground that the appellant had not provided independent evidence to show that she needed long-term care to perform everyday tasks. There was no report from a doctor to that effect. But even if she did require long-term personal care, it had not been shown that this was not available in Russia. It was considered that the appellant was currently receiving the required level of care in Russia, and it had not been shown that this could not continue.

4. In a witness statement dated 29 September 2022, the appellant's daughter and sponsor said that her mother's health had deteriorated in 2016. Since then, her mother had had to have both knee joints replaced, and as a result her mobility was not fluid. She was only able to get around her flat because she used two canes. One was a support cane for walking, and the other was a long cane specifically for blind people. In addition to her mother's physical disability, her eyesight had started to worsen in 2016, and as a result her vision in both eyes was poor. She was partially-sighted because of this vision impairment disability. There were no private care homes in Kalmykia (where her mother lived) and no care professionals to help with personal care.

5. Her mother relied on help from friends and neighbours to assist her with everything from food shopping to her personal care. Anna was an old friend, who brought her mother cooked food, kept her company and assisted her with a shower and personal care. She did this mainly for free. Vera, a neighbour, cleaned her mother's flat and also cooked her food. Sandzhi was a young man who bought and brought food, any essential things, and assisted with transportation. Her mother's friend Miah did her hair, nails and assisted with showers, dressing and personal care. Tatiana was a Sales Assistant from a nearby shop, who her mother called to order food, essential things, and she delivered it to the door.

6. In the respondent's review dated 27 October 2022, it was acknowledged that the appellant had submitted a medical letter stating that she required permanent nursing care due to health reasons. Medical reports in the appellant's bundle demonstrated that the appellant had considerable degenerative vision problems, heart disease and mobility issues following a double knee replacement. The appellant was classed as having a first-degree disability due to her vision problems. Accordingly, the respondent accepted that due to her disability, the appellant required long-term personal care to perform everyday tasks, and so paragraph E-ECDR.2.4 of Appendix FM was met.

7. However, the respondent maintained that paragraph E-ECDR.2.5 was not met. While it was accepted that state care homes were inaccessible and unavailable for the appellant, she had not demonstrated that she required the level of care that would be provided in a care home. She was currently receiving care from various friends and neighbours, and there was no

indication that this arrangement could not continue, or that this level of care was insufficient. There were no statements from the appellant's carers to suggest that they could not continue to care for the appellant for any reason. Therefore, while the appellant clearly required some degree of care, it was not accepted that there was nobody in the appellant's country who could not provide the required level of care, and so paragraph E-ECDR.2.5 was not met.

8. Following the respondent's review response, the appellant's solicitors uploaded to the CCD file an updated witness statement signed by the sponsor on 21 December 2022. In this supplementary statement, the sponsor said that much had changed since her last statement. Her mother could no longer rely on regular and consistent help from her friends. Anna, who lived next door and who was the same age as her mother, had moved from Elista to live with her daughter because of her own health problems. She had moved to Israel. Her mother's other friend, Vera, had moved to Moscow, and Sandzhi now lived in St Petersburg. Because of this, she had to ask other people to help her mother whenever they could. They could not be relied upon, because sometimes they could not help or did not want to help, as they were not obliged to look after her. She had arranged for an acquaintance, Valentina, to help with meals whenever she could. She lived on the other side of town, which was about 40 minutes away. She had had to rely on Valentina to pick her mother up from hospital and take her home after her recent stay in hospital. Her mother had been in hospital receiving treatment for her visual impairment. She was blind in one eye, and had 20% vision in the other eye. Another acquaintance, Maya, still helped her mother with her personal hygiene, but she could not rely on these people for her mother's long-term care.

The Hearing Before, and the Decision of, the First-Tier Tribunal

9. The appellant's appeal came before Judge Parkes sitting at Birmingham on 24 February 2023. Both parties were legally represented. The appellant was represented by Mr Neil Garrod of Counsel.

10. In the Decision, the Judge summarised the background at paragraph [6]. At [7], he gave a brief summary of the hearing. The sponsor attended the hearing and gave oral evidence in addition to her three witness statements.

11. At paragraphs [8]-[10], the Judge gave an account of the sponsor's oral evidence. At the start of her evidence, the sponsor corrected her earlier statement that her mother had only 20% vision. In fact, it was only 2% vision. Given the current situation, the sponsor said that she could not look after her mother and was unable to transfer money to her since the war started:

> "At the moment her mother has savings, friends help buying her food and essentials using her mother's money, they provide practical and physical help."

12. The Judge's account of the sponsor's oral evidence continued as follows:

> "Her mother's friend Anna is her mother's age, the Sponsor thought, Vera is a bit younger and Sandzhi is about 28 or 29, Maya 70-75 and Tatiana looks younger but the Sponsor did not know, she accepted she could be wrong about their ages. The Sponsor wants to trust them and thinks she can. The Sponsor has known the older one since her childhood. Anna and Vera apparently have moved away, the Sponsor did not know if they have any health issues. She accepts that the appellant is financially self-sufficient but not in other ways. Vera lived nearby and helped her mother with cleaning and personal hygiene, she does it because they are good friends."

13. The sponsor added that, from 2017 onwards, she had visited yearly, last going in October 2022. The application was generated by a decline in hr mother's health, which had started in 2016. Her mother was still helped by Maya who helped with her hair, nails and personal hygiene, and she was paid by the appellant.

14. At [11], the Judge set out the position taken by the respondent in the respondent's review. It was accepted that the appellant did not have access to a care home, but it was not accepted that the appellant required the level of care such a home would provide. The care the appellant needed was currently provided by friends and neighbours, and there was no evidence from them to suggest that the current arrangements could not continue.

15. At [12], the Judge said that the point in issue was, (legally speaking) very narrow. This was not a reflection of the importance of the decision for the appellant and the sponsor, and it would be surprising if the sponsor was not seriously concerned and worried about her mother. It was clear that the current circumstances of the war in Ukraine, and the consequent sanctions, had made things much more difficult and troubling, and had reduced the opportunity for the sponsor to assist her mother.

16. At [13], the Judge said that for the appellant it was submitted that with her health issues, 2% vision, two false knees and the other issues set out, she would be liable to falls, and no amount of support from friends and neighbours would be sufficient. It was submitted that the respondent should have established the consequences of the appellant's health needs. The Judge said he disagreed with that submission. The burden was on the appellant.

17. At paragraph [14], the Judge said that it was strongly urged for the appellant that there was no basis for saying that the current arrangements could continue. However, the sponsor's evidence on the age and health of the individuals who were helping was not supported by anything from the individuals themselves. It was clear that the sponsor's mother needed assistance, but it was also clear that she was receiving

assistance, and there was no evidence to show that the current arrangements were not meeting her needs. The Judge continued in [15]:

> "The current arrangements may become unsatisfactory in two ways, or both combined, as the appellant's needs increase and/or those helping her see their ability to continue reduced or being unable to meet an increase in her needs. However, there is no evidence to suggest how things may develop and submissions depend on speculation both as to the reality of the current position and the prognosis. As it stands, I find that the care that the Appellant receives meets the terms of the Immigration Rules for adult dependant relatives and her admission to the UK is not justified on that basis."

18. At [16], the Judge held that while it may be determined by factors beyond their control, the relationship between the appellant and the sponsor was not such as to engage Article 8, taking into account the guidance in *Kugathas*. The appellant's circumstances were within those of the type contemplated by the Immigration Rules and could not be said to be exceptional or compelling, such that a grant outside the Rules would be justified.

The Grounds of Appeal and the Reasons for the Grant of Permission to Appeal

19. Permission to appeal was refused by the First-tier Tribunal, but on a renewed application to the Upper Tribunal which was settled by Mr Garrod of Counsel, permission was granted.

20. Mr Garrod's overarching submission was that the decision was manifestly inadequate. There was a failure to make proper evidenced findings or to carry out a reasoned assessment of the evidence provided. The only attempt at justification in the determination was the claimed paucity of evidence. What the Judge said at paragraphs [14] and [15] was not correct. In her oral evidence the appellant's daughter was able to graphically describe the conditions her mother lived in, and the inadequacies of the care her mother received, despite her best efforts. He believed that her evidence robustly stood up to scrutiny. There was no reference to any findings arising from this evidence, nor why it was seemingly not taken into account. There was, for example, no adverse credibility finding. It was the appellant's case that proper consideration of the evidence would have led to a different outcome. Therefore, the failure to properly consider evidence was a material error of law.

21. In granting permission on 16 June 2023, Upper Tribunal Judge Norton-Taylor held that it was arguable that the Judge had not undertaken an assessment of what the appellant's personal care needs actually were, and that the analysis and/or reasoning in respect of the adequacy of current care provision was arguably flawed.

22. He observed that the appellant would undoubtedly be aware of the stringency of the adult dependant relative provisions within the Immigration Rules, and that questions of the materiality of any errors might arise.

The Rule 24 Response

23. In a Rule 24 response dated 14 July 2023, Chris Avery of the Specialist Appeals Team submitted that the grounds were a disagreement with the findings of the First-tier Judge. It was clear from the determination that the Judge had considered the evidence provided by the appellant. Paragraphs [8] and [9] referred specifically to the oral evidence of the sponsor, and at paragraph [14] the Judge noted the lack of supporting evidence from those who currently looked after the appellant. At paragraph [15] the Judge concluded that the current situation did not show that the appellant's current needs were not being met. This was a conclusion that was open to the First-tier Tribunal Judge on the evidence.

The Hearing in the Upper Tribunal

24. The hearing before me was a hybrid one, with Mr Lay appearing via Teams, and Ms Isherwood attending at Field House in person. The sponsor also attended via Teams. Mr Lay submitted that the Decision was erroneous in law for the two reasons identified by Upper Tribunal Judge Norton-Taylor when granting permission to appeal. He questioned whether the Judge had overlooked the sponsor's third witness statement, as the Decision did not appear to engage with the change of circumstances that the sponsor had outlined in this witness statement.

25. On behalf of the respondent, Ms Isherwood adopted the Rule 24 response. It was clear, she submitted, that the Judge had engaged with the third witness statement of the sponsor, as the Judge had expressly referred to the sponsor's three witness statements as well as to her oral evidence. The crucial consideration, she submitted, was that there was no evidence from the people who were helping the appellant.

26. In reply, Mr Lay submitted that the Decision was deficient in that it did not identify what the appellant's personal care needs were. Moreover, the care and support described by the Judge was clearly not sustainable on a long-term basis. It was a highly precarious arrangement.

27. I reserved my decision.

Discussion and Conclusions

28. On analysis, the Decision has been the subject of three lines of attack, one of which has not been pursued.

29. The line of attack which has not been pursued is Mr Garrod's assertion that Judge Parkes completely ignored evidence given by the sponsor to the

effect that the current care arrangements for her mother were deficient. Mr Garrod did not support this submission with a detailed note of the evidence and the appellant has not, in the alternative, sought to obtain a recording of the hearing so as to make good Mr Garrod's submission. The upshot is that the only detailed account that is before me of the oral evidence given by the sponsor is that provided by the Judge in the Decision.

30. The Judge does not make express reference to the sponsor's third witness statement made in response to the Respondent's Review, in which the Sponsor asserted that her mother could no longer rely on regular and consistent help from her friends. But there is no reason to suppose that he overlooked it, and it was not incumbent on him to give it priority over what the sponsor said about the current care arrangements in her oral evidence.

31. As summarised by the Judge, the thrust of the sponsor's oral evidence was not that the current care arrangements were deficient, but that she was concerned that the arrangements were not sustainable in the longer term. Accordingly, despite the change of some of the personnel involved in caring for the appellant, the central issue in dispute remained as it had been previously. On the one hand, Mr Garrod submitted in the ASA that there was no promise that the current support could continue both indefinitely and sufficiently; and, on the other hand, the respondent submitted that it was not shown that the appellant would not be able to access the same level of care and support for the foreseeable future.

32. As to the first arguable error identified in the grant of permission, it is undoubtedly true that the Judge did not undertake an assessment of what the appellant's personal care needs were. However, having reviewed the relevant material, I consider that the Judge did not have the necessary information to undertake such an assessment. I also consider that the Judge directed himself appropriately at [13] that the burden rested with the appellant to show that her current needs were not being met, and it was not for the respondent to establish the consequences of the appellant's health needs.

33. As I explored with Mr Lay in oral argument, this was an unusual case in that there was no report from a doctor in the country of origin explaining what the appellant's care needs were, arising from her various medical conditions. Although there was a report giving a recommendation that the appellant needed permanent nursing care, no particulars were given in this report or elsewhere as to why the appellant needed nursing care, as distinct from care and support provided by friends and neighbours so as to assist the appellant in performing everyday tasks. In addition, the sponsor herself did not describe in her oral evidence any respect in which the care and support that her mother was receiving from friends and neighbours was deficient in meeting her needs.

34. I also do not consider that the Judge erred in law in holding at [15] that the current care arrangements were adequate. As previously stated, the core

issue in dispute was whether the current care arrangements were sustainable. The position taken by the respondent was that the burden was on the appellant to show that the current care arrangements could not continue. Conversely, the appellant's position was that the current care arrangements were highly precarious, as shown by the change of personnel, and that they did not constitute a sustainable solution to the appellant's care needs. It is tolerably clear from the Judge's line of reasoning that the Judge resolved this conflict in favour of the respondent on the basis that there was no evidence from the appellant's current carers that they were not willing or able to continue in their role as carers, even if they were appropriately remunerated by the appellant for their services. Affordability was not an issue, so it was open to the Judge to find, as he did, that the sponsor's fears were speculative, and that the appellant had not discharged the burden of proving that she would not be able to continue for the foreseeable future to obtain (if necessary, by paying for it) the level of care and support that she required for her current health conditions and her current level of disability.

35. In summary, the Judge gave adequate reasons for finding that the appellant had not shown that the care she required was not available where she was living in Russia, and no error of law is made out.

Notice of Decision

The decision of the First-tier Tribunal did not contain an error of law, and accordingly the decision stands. This appeal to the Upper Tribunal is dismissed.

Andrew Monson
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber
3 August 2023