Upper Tribunal
(Immigration and Asylum Chamber) **Appeal number: OA/08864/2013**

THE IMMIGRATION ACTS

Heard at Field House, London	**Determination Promulgated**
On 9 October 2014	**On 10 October 2014**

Before

DEPUTY UPPER TRIBUNAL JUDGE GRIMES

Between

ENTRY CLEARANCE OFFICER

Appellant
and

NAGESWARY SHANMUGARAJAH

Respondent

Representation:
For the Appellant: Mr S Whitwell, Home Office Presenting Officer
For the Respondent: Ms C Bayati, instructed by S Satha & Co Solicitors

DETERMINATION AND REASONS

1. Whilst this is an appeal by the Entry Clearance Officer (ECO), for convenience I will refer to the parties in the determination as they appeared before the First-tier Tribunal

2. The appellant is a national of Canada. She is the mother of Anuja Ranjan, a British national and the sponsor in this appeal. The appellant applied for entry clearance as the Adult Dependant Relative of the sponsor under paragraph EC-DR of Appendix FM of the Statement of Changes in Immigration Rules, HC 395 (the Immigration Rules). The Entry Clearance Officer (ECO) refused the application under EC-DR.1.1 (d) with reference to E-ECDR.2.4 and 2.5 of Appendix FM. Judge of the First-tier Tribunal Cohen allowed the appeal. The Secretary of State now appeals with permission to this Tribunal.

3. The relevant provision of Appendix FM for the purposes of this appeal are as follows;

> "E-ECDR.2.4. The applicant … must as a result of age, illness or disability require long-term personal care to perform everyday tasks.
>
> E-ECDR.2.5. The applicant … must be unable, even with the practical and financial help of the sponsor, to obtain the required level of care in the country where they are 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."

4. The Judge found on the basis of the medical evidence and the statements that the appellant '*suffers from conditions preventing her from performing everyday tasks'* and that she therefore met the Rules in relation to his matter. The grounds of appeal to the Upper Tribunal do not take issue with this finding. I note that in making this finding the Judge said that the appellant is 81 years old whereas in fact she was at that time 71 years old. However, as I have said this finding was not challenged and in any event I note that the Judge gave the appellant's correct date of birth at the outset of the determination and it is clear that the Judge attached weight to the medical evidence and the statements rather than the appellant's age in reaching his conclusion that the appellant requires long-term personal care. I am therefore satisfied that this was not a material error.

5. At the hearing before me Mr Whitwell submitted that the Judge made a number of other factual errors. He firstly submitted that the Judge had wrongly recorded the name of the Home Office representative, appearing to name the presenting officer who appeared at the previously adjourned hearing instead of counsel who appeared at the resumed hearing. However I note that the Judge did refer to the representative by name in the decision itself at paragraph 8. Mr Whitwell also submitted the Home Office record of proceedings which indicated that counsel had cross-examined the sponsor whereas the Judge noted that there was no cross-examination [7]. Ms Bayati, who had represented the appellant at the First-tier Tribunal hearing said that the sponsor adopted her statement in oral evidence and that there was only one question asked in cross-examination which related to how the sponsor's sister would be able to travel to the sponsor's house to

care for the appellant. The sponsor said that her sister would take the train. Whilst the Judge did make an error in relation to this I do not think that it was significant as the Judge found that the sponsor and her sister were able to provide care to the appellant. Mr Whitwell further pointed to paragraph 11 where the Judge used the word ‘eight’ instead of ‘age’. This is an obvious dictation or typing mistake and it is clear from the sentence what is meant. These mistakes were not relied upon in the grounds of appeal. In any event for the reasons set out above I am satisfied that they are not significant or material either separately or cumulatively.

6. The Judge also found that the appellant's daughter and son in Canada could not provide the care required and that the costs of appropriate healthcare there were ‘prohibitive’. The Judge therefore allowed the appeal being satisfied as to paragraphs E-ECDR 2.4 and 2.5.

7. In the grounds of appeal to the Upper Tribunal the ECO challenged the findings made in relation to E-ECDR 2.5. It is acknowledged that the daughter’s husband had been injured in an industrial accident ten years previously and it is contended that the Judge failed to address the respondent’s contention that there had been no change in the daughter’s circumstances. The respondent contends that the daughter in Canada could provide gratuitous care or could provide financially for care. Permission to appeal was granted on the basis that the Judge may have erred in failing to deal with the lack of change in the Canadian daughter’s circumstances.

8. Ms Bayati relied on her Rule 24 response and submitted that the evidence before the First-tier Tribunal Judge was that the appellant had resided with her daughter in Canada since arriving there in 1996. The appellant's case is that she helped and supported her daughter. In 2003 the appellant's son-in-law suffered a serious injury at work leaving him partially disabled and unable to work since which time the appellant's daughter has acted as his carer as well as looking after her children. She submitted that the evidence before the Judge was not that the Canadian daughter’s circumstances had changed but that the needs of the appellant herself had changed. Her health has deteriorated to such an extent that the daughter can no longer provide the care her mother needs and her son-in-law has become resentful of the time his wife has to spend looking after the appellant. She submitted that the Judge has given sufficient reasoning for reaching the conclusions he did.

9. It is clear from the statements and evidence before the Judge that the case was made that the appellant, who used to help and support her daughter, has herself over the last two to three years increasingly required support and care. The Canadian daughter’s statement explains how her mother’s increasing needs has led to her husband’s increasing resentment. According to the sponsor’s statement she has been providing financial support to her mother since her brother-in-

law's accident in 2003. This evidence is set out at paragraph 4 of the Judge's determination.

10. The Judge accepted that the appellant's condition has deteriorated recently and that the level of care she requires has increased. It is clear from reading paragraphs 10 to 16 that the Judge accepted the evidence that the daughter in Canada could no longer provide the level of care required given her own circumstances. He accepted that the appellant's son in Canada could not provide the required care or financial support. The Judge also clearly found that the cost of the required care in Canada was not affordable to the sponsor, the person who has supported the appellant since 2003. These findings were open to him on the evidence. It is upon these findings that the Judge decided that the appellant had demonstrated that she met the requirements of the Rules.

11. I am satisfied that the Judge reached a decision open to him on the evidence before him and that he made no material error of law.

Conclusions:

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

The decision of the First-tier Tribunal shall stand.

Signed Date:
9 October 2014

A Grimes
Deputy Judge of the Upper Tribunal