



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

Appeal Numbers: OA/11714/2013  
OA/11704/2013  
OA/11720/2013

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 2 September 2014**

**Determination  
Promulgated  
On 16 September 2014**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE G A BLACK**

**Between**

**MRS SITA DEVI AGARWAL (FIRST APPELLANT)  
MR RAM CHANDRA AGARWAL (SECOND APPELLANT)  
MISS ANITA AGARWAL (THIRD APPELLANT)**

Claimants

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Appellant

**Representation:**

For the Appellants: Mr N Bramble, Home Office Presenting Officer

For the Respondents: Mr MD Monirul Islam, London Law Associates

**DETERMINATION AND REASONS**

1. In this appeal I shall refer to the parties as the Secretary of State who is the appellant and to the claimants.
2. This matter comes before me for consideration as to whether or not there is a material error of law in the determination. The appellant is the Secretary of State for the Home Department and the claimants are husband, wife and daughter, all of whom are citizens of India and whose dates of birth are 1 January 1948, 26 October 1951 and 24 September

1977. The sponsors are the sons/brothers of the claimants and are resident in the UK and British citizens.

3. The Secretary of State has appealed a decision before the First-tier Tribunal (Judge Stanford) promulgated on 24 May 2014 in which he allowed the appeals under the Immigration Rules granting entry clearance as adult dependent relatives (Appendix FM – paragraph EC-DR.1.1) and on human rights grounds.

## **Background**

4. The reasons for refusal dated 26 April 2013 issued in respect of all three claimants were that:
  - (1) They had travelled extensively to other countries and last visited in September 2012. This was inconsistent with their claimed level of disability.
  - (2) The current arrangement could continue with the additional employment of a new housemaid and finance and visits from the sponsors.
  - (3) The Secretary of State was not satisfied that the claimants could not obtain the required level of care in the country of India. No challenge was made as regards relationship, maintenance or accommodation issues.
5. Lengthy grounds of appeal were submitted together with extensive medical evidence.
6. The Entry Clearance Manager reviewed the decision and argued that all medical conditions for the three claimants were managed in India. The required level of help could be sourced in the country rather than the locality and was affordable. Visits and support could continue from the sponsors.
7. In his determination the Tribunal accepted the medical conditions suffered by each claimant as evidence in extensive medical and psychological reports.
8. He found that external support and care was needed and that none of the three claimants was fit or strong enough to meet long-term care needs [24].
9. The care needs were met by a combination of domestic worker, maid and the sponsor's frequent visits to India. [25]. He did not accept that a replacement maid could not be found to cook and clean [26]. He found that in the long term the claimants required additional emotional support for depression and physical support for disabilities and there was a need

for all claimants to be able to rest. [27] The Tribunal found that care was not provided by any local authority or other local society. He accepted credible evidence from the sponsors that there were no commercial agencies available which could guarantee that they could provide a carer for the long-term to meet the required needs of the claimants. [28]. He found that there were no relatives in India who were able to provide such care.

10. At [33] the Tribunal found that the relevant Rule included an element of reasonableness and he interpreted the same by finding that the sponsors had made reasonable efforts to find a suitable carer in India.
11. Article 8 human rights were briefly considered in [38 to 41].

### **Grounds of Appeal**

12. The Secretary of State submitted that any deficit in care could be provided by a domestic worker or maid and that the Tribunal accepted that a replacement maid could be found and employed.
13. The Tribunal was wrong to find that emotional support was needed as the Rules applied to illness or disability. There was no evidence to indicate that care was not available in the country of India.
14. The Tribunal failed to apply the Immigration Rules correctly.
15. The Tribunal failed to adopt the "**Gulshan**" approach as regards Article 8, namely to establish the existence of arguably good grounds for consideration of Article 8 outside of the Rules.

### **Initial Hearing**

16. At the hearing before me Mr Bramble relied on grounds of appeal having conceded that paragraph 4 line three was inaccurate and was not relied on. Paragraph 5 line one was not an accurate account of the judge's finding at [25] and not relied on.
17. Mr Bramble amplified the arguments submitting that the Tribunal unlawfully introduced a reasonableness test in assessing the evidence as to availability of care in India.
18. Mr Islam submitted that the Tribunal correctly applied the facts to the Immigration Rules. The issue of affordability was not in question. The Secretary of State's grounds of appeal amounted to a disagreement with the decision reached by the Tribunal.
19. At the end of the hearing I announced my decision that the determination disclosed no material error of law and shall stand. I now give my reasons.

## **Discussion and Decision**

20. I am satisfied that the Tribunal had a clear and accurate understanding of the requirements of the relevant Rules in particular in sub-Section (b) [29]. The Rules provide that the required level of care “.. is not available and there is no person in that country who can reasonably provide it.”
21. There was extensive evidence before the Tribunal setting out the physical and mental health problems suffered by each claimant. The Tribunal also relied on the credible evidence of the sponsors in reaching findings and conclusions. I am satisfied that those findings and conclusions were open to the Tribunal on the evidence before it. The issues raised by the Secretary of State amount to no more than a disagreement. There is no real criticism raised of the determination in the grounds of appeal at paragraphs 1 - 7. I am satisfied that those grounds are without merit particularly in light of the corrections made by Mr Bramble to the grounds of appeal. Taking into account those matters there is little if anything in the grounds showing any error of law.
22. Mr Bramble in submissions sought to refocus on the Tribunal’s introduction of a reasonableness test [33] notwithstanding that this was not specifically raised in the grounds of appeal and no leave to amend was applied for or granted.
23. The Tribunal referred to an “element of reasonableness” existing in the rule rather than a test [33]. It is clear that the Rules do contain reference to an element of reasonableness. The Tribunal considered all the evidence having regard to the required care needs for the three claimants in the long-term and having regard to the evidence before him as to the efforts made to establish and source what care was reasonably available in India. The reasonableness relates to the provision of the care. There is no evidence from the Secretary of State relied on to counter the conclusion reached. I find no material error of law disclosed.
24. I am satisfied that the findings and conclusions were clearly open to the Tribunal on the evidence before it. The Tribunal specifically found that the needs of the claimants went beyond the provision of domestic tasks finding that there was a need in the long-term for physical support for those with disabilities and emotional support for depression. Further he distinguished between the care that was presently provided and that which was needed in the long-term and concluded that the level of care was not reasonably available in India.
25. There is no material error of law in the determination having regard to the decision under the Immigration Rules which shall stand. I do not consider it necessary or material to further examine the assessment under Article 8

as a consequence of my decision under the Immigration rules and also because the ground concerning the “Gulshan “ approach falls away following **MM(Lebanon)[2014]EWCA Civ 985**. This is no longer a necessary step to consider in an Article 8 appeal.

**Decision**

26. I find no material error of law in the determination.

27. The determination shall stand.

Signed

Date 15.9.2014

Deputy Upper Tribunal Judge G A Black

No anonymity order made.

Fee award made in full.

Signed

Date 15.9.2014

Deputy Upper Tribunal Judge G A Black