



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: OA/23471/2012
OA/23473/2012

THE IMMIGRATION ACTS

Heard at Field House
On 12th March 2014

Determination Promulgated
On 18th March 2014

Before

UPPER TRIBUNAL JUDGE MARTIN

Between

MR KULDIP SINGH
MRS SUKHBIR KAUR

Appellant

and

ENTRY CLEARANCE OFFICER - NEW DELHI

Respondent

Representation:

For the Appellant: The Sponsor in person
For the Respondent: Ms A Holmes (Senior Home Office Presenting Officer)

DETERMINATION AND REASONS

1. The Appellants are husband and wife aged 75 and 70 respectively and citizens of India. They made applications to the Entry Clearance Officer for leave to enter the UK as the adult dependent relatives of their son, a British citizen. The Entry Clearance Officer refused the applications and the Appellants appealed to the First-tier Tribunal.

2. The appeals came before Judge Callender Smith at Taylor House on 10th September 2013 and in a determination promulgated on 17th September 2013 the Judge allowed the appeals under the Immigration Rules.
3. The Entry Clearance Officer has been granted permission to appeal to the Upper Tribunal. The grounds upon which permission was granted accept the Appellants' need for long-term care but assert that the Judge did not adequately assess the possibility that such care is available in India. The Judge's findings that the suggestion that care could be provided in India "ignores the familial and cultural bonds and expectations that exist in this situation" ignores the requirements of E-ECDR2 .5.
4. The application was made on 19th July 2012 and so fell to be decided under Appendix FM. The relevant requirements are contained in section E-ECDR of Appendix FM. The particular part that the Entry Clearance Officer suggests the Judge did not deal with is E-ECDR.2.5 which requires:-

"The applicant or, if the applicant and their partner are the Sponsor's parents or grandparents, the applicant's partner, 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 that is no person in that country you can reasonably provide it; or
 - (b) it is not affordable".
5. The Judge set out that he had considered all of the evidence in the Appellants' bundle and heard oral evidence from the Sponsor. It is correct that nowhere in the determination does the Judge consider the availability and affordability of care in India and in particular does not consider that requirement of the Rule. At best he suggests that the Rule does not conform with culture. He is not entitled to ignore a requirement of the Immigration Rules, even if he disagrees with it.
6. In allowing the appeal under the Rules without specifically considering one of the requirements of that Rule the First-tier Tribunal made a material error of law. I therefore set aside the determination and redecide the appeal. There is no necessity for evidence - it is fully set out in the previous determination.
7. This is a sad case in that the Sponsor and his family reside in the UK and his parents who are now elderly and in poor health and reside in India. In particular his father is terminally ill with advanced prostate cancer that has spread to his bones and his mother is also in a fragile state of health. However, the Appellants in this case quite simply cannot meet the requirements of the Rules. They have sold property in India which has provided them with a cash sum of £200,000 and they live in their own property. £200,000 is a very large amount of money in India. There is no suggestion

that help cannot be purchased in India to care for them and quite clearly the finances are available.

8. It is understandable that the Sponsor, being their son, wishes to provide care for them himself. However, if they cannot meet the Rules for entry to the UK then he would have to undertake that care in India rather than the UK. The circumstances in this case are the unfortunate result of younger members of the family relocating and resettling across continents. They do so without any legitimate expectation that as their parents become elderly they will be able to join them in the UK. They can if they meet the Rules; they cannot if they do not.
9. Accordingly, for the above reasons the appeal to the Upper Tribunal is allowed such that the Appellants original appeals against the Entry Clearance Officer's decisions are dismissed.

Signed

Date 17th March 2014

Upper Tribunal Judge Martin