



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

Appeal Number: IA/50744/2013

THE IMMIGRATION ACTS

**Heard at Field House
On 17th December 2014**

**Determination
Promulgated
On 2nd January 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

**MR TARIQ JAMIL RAJA
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr I Khan (Solicitor)
For the Respondent: Mr P Nath (HOPO)

DETERMINATION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge C Newberry promulgated on 22nd September 2014, following a hearing at Taylor House on 23rd June 2014. In the determination, the judge allowed

the appeal of Tariq Jamil Raja. The Respondent Secretary of State, subsequently applied for, and was granted permission to appeal to the Upper Tribunal, and thus the matter comes before me.

The Appellant

2. The Appellant is a male, a citizen of Pakistan, who was born on 15th December 1974. He appealed against the refusal of his application for a grant of a residence card on the basis that he is a third country national, upon whom a British citizen is dependent in the United Kingdom, the decision of the Respondent Secretary of State having been made on 25th November 2013.

The Appellant's Claim

3. The Appellant's claim is that he is married to a British citizen, Vicki Louise Baxter. They married on 13th November 2011. His wife suffers from epilepsy and receives treatment. She also has learning difficulty. These conditions were confirmed by a letter from the wife's doctors, namely, Drs Oliver, Brightwell and Donnelly, the general practitioners.
4. The Appellant's wife suffers from fits and seizures. She is not so medically fit as to be able to lead an independent life. She needs daily assistance from the Appellant. She is not allowed to drive or to use a cooker. However she does go to work. These were the submissions of the Appellant before Judge Newberry.

The Judge's Findings

5. The judge considered that the sole issue before him was whether the Appellant is the "primary carer" for the purposes of paragraph 18A of the Immigration (European Economic Area) Regulations 2006. He found that the Appellant's wife lived with her parents before she married the Appellant. The parents looked after her. The Appellant's evidence of the extent and nature of the care he provided was not challenged. He prepared her food, drove her to work, and accompanied her to work if public transport was used. He dispensed her medication. This controlled her epilepsy. He sometimes went shopping with her. The judge concluded that,

"The combination of the learning difficulty and epilepsy in any view is made out and represents a state of affairs which warrants a high degree of support. The fact that she is not permitted to drive is a clear indication of the seriousness of the condition as is her inability to cook because of the attendant dangers" (paragraph 10).

The judge concluded that he was satisfied that the Appellant was her primary carer (paragraph 11). The appeal was allowed.

Grounds of Application

6. The grounds of application state that the judge only had regard to one piece of evidence, and this was from the Appellant's wife's general practitioners. What the letter from them suggested was that the condition of the Appellant's wife was an improving one. The medical evidence established that she suffered from epilepsy and required controlled medication. However, the Appellant's wife did go to work, and had been working since 2010, for twenty hours a week at Primark. In the circumstances, there was a lack of analysis by the judge supporting the conclusion that (No.1) these factors alone were sufficient to mean that she required care as prescribed in the EEA Regulation; and that there was a lack of engagement with the refusal letter as to what is required to bring the applicant within the scope of the judgment in **Zambrano**.
7. Permission to appeal was subsequently granted by the Tribunal.

Submissions

8. Mr Nath, appearing on behalf of the Respondent Secretary of State, submitted that this was a case where the Appellant's wife was working at Primark since 2010 for twenty hours per week. All the judge had was a GP's letter. It was the only piece of medical evidence. This was dated 15th June 2012. It confirmed that the Appellant's wife had health issues. However, this in no way meant that her condition was such that she needed the services of a "primary carer" and that the Appellant was such a "primary carer". The judge's conclusions in this respect at paragraph 10 were inadequately reasoned with respect to what is expected in the EEA Regulation.
9. For his part, Mr Khan submitted that it was open to the judge to conclude as he did in the light of the medical evidence. The wife suffers from epilepsy and has learning difficulties. The judge was a person who took the evidence on the day of the hearing and concluded in a manner that was open to him. His findings were perfectly adequate.
10. In reply, Mr Nath took me to the refusal letter. This expressly states that, "we would expect to see evidence from the NHS/local authority/private care to support this", namely, to support that "the majority of the care" was provided by the primary carer. There was no evidence that this was the case from an official body.

Error of Law

11. I am satisfied that the making of the decision by the judge involved the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision and remake the decision (see paragraph 12(2) of TCEA 2007). My reasons are as follows. The relevant provision with respect to the requirement of a "primary carer" is Regulation 15A(7) of the EEA Regulations. This states that "to be regarded as a primary carer" it has to be shown that the person in

question “is the person who has primary responsibility for that person’s care”. This is a question of evidence.

12. The evidence with respect to this comes only from the Appellant and his wife, with the general practitioner’s letter in the background. The refusal letter is correct to say that, “in order to demonstrate primary/shared responsibility for adults, the majority of the care must be provided by the primary carer. We would, therefore, expect to see evidence from the NHS/local authority/private care to support this”. This evidence is missing. If the Appellant was providing the degree and level of care that he maintains, it would be an easy matter for him to get local authority confirmation of this. As things stand at the moment the letter of 15th June 2012 only confirms that the condition of the Appellant is an improving one. Given that she has been working since 2010 for twenty hours, the need for such evidence is all the more compelling.
13. Secondly, this is underscored by the fact that Regulation 15A(4A) in referring to 'the primary carer of a British citizen' is one also which stipulates that 'the relevant British citizen is residing in the United Kingdom' and 'would be unable to reside in the UK or in another EEA State if [the person] were required to leave.' The appellant’s wife was previously looked after by her parents. There is no reason why, in the event of her husband the appellant being removed, she cannot return to being looked after by her parents again – should that be necessary in the circumstances of her improving condition.
14. Accordingly, whereas the judge made the factual findings in the way that he saw fit, their relationship to corroborative evidence from a state agency, is not made out. On the facts of this case, taken as a whole, such evidence was required.

Remaking the Decision

15. I have remade the decision on the basis of the findings of the original judge, the evidence before him, and the submissions that I have heard today. I am dismissing this appeal for the reasons that I have set out above. The Appellant has not furnished evidence from the NHS or from the local authority to confirm that he is the primary carer in the sense that he is providing the majority of the care for the Appellant, even if she does suffer from epilepsy and even if she does have learning difficulties. It is open to him to make another application.

Decision

16. The decision of the First-tier Tribunal involved the making of an error of law such that it falls to be set aside. I set aside the decision of the original judge. I remake the decision as follows. This appeal is dismissed.
17. No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

31st December 2014