



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

Appeal Number: OA/02220/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 26 March 2015  
Prepared 26 March 2015**

**Decision & Reasons Promulgated  
On 27 March 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE DAVEY**

**Between**

**ECO - NEW DELHI**

**and**

**SATYA WATI KAUSHAL  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

Respondent

**Representation:**

For the Appellant: Mr P Nath, Senior Home Office Presenting Officer  
For the Respondent: Mr D Bazini, Counsel, instructed by Gulbenkian Andonian Solicitors

**DECISION AND REASONS**

1. In this decision the Appellant is referred to as the Secretary of State and the Respondent is referred to as the claimant.
2. The Claimant, a national of India date of birth 12 September 1927, appealed against the ECO's decision dated 7 January 20124 to refuse entry clearance with reference to Appendix FM and paragraph EC-DR.1.1.1 of Appendix FM of the Immigration Rules as amended.

3. The appeal was raised with particular reference to the adverse decision on the availability of care for the Claimant in India. Following the submission of further information the issues were revisited in an Entry Clearance Manager's review which does not constitute a new decision but nevertheless confirmed the stance being taken that there was no evidence demonstrating that the claimant's care could not continue to be provided being a combination of external care and family visits.
4. The appeal against the ECO's decision came before First-tier Tribunal Judge Doran who decided on 26 November 2014 that the appeal under the Immigration Rules should be allowed. The judge did not continue to consider Article 8 outside the Rules.
5. Permission was given to the ECO to appeal that decision by First-tier Tribunal Judge Lambert on 28 January 2015.
6. In granting permission the judge said this:

"The real difficulty is the nature of the evidence relied on for these conclusions. The judge found the requirements of FM-SE 34 to have been met. I can see no reason why this conclusion was not justified on the basis of the doctor's report described in paragraph 53 of the decision. However so far as FM-SE 35 is concerned, Dr Singh's evidence appears not specifically to have addressed the availability of paid care in India. The evidence that 24 hour nursing residential or domestic care was unavailable seems to have come from an unqualified neighbour, Mr Sharma (paragraph 55). The report from Rockland Hospitals (paragraph 44) seems only to have stated that 24 hour care needed 'was *usually* provided by the family' - not that it could not be provided from an outside source. No other independent evidence from a central or local health authority, doctor, or other health provision is mentioned."
7. The grounds essentially reflect the same point upon permission was granted, namely an absence of evidence to support the conclusion that the Claimant needed family care as referred to in the Claimant's bundle pages 66 and 67, being the letter from Dr Singh written from Rockland Hospitals which appears to be a group of hospitals in India. It would perhaps have been more helpful to the person settling the grounds of application to have perhaps had more than just the determination of the judge in front of them. It is clear on a reading of the letter from Rockland Hospitals, which it is accepted postdates the date of decision, to have taken into account, it was not just the issue of physical health but also the extent to which the claimant was becoming mentally depressed and the likelihood of that becoming exacerbated.
8. The judge did, however, take into account this material and properly explained why he did so at paragraph 54 of the determination. The judge also had evidence from one of the Claimant's daughters, Dr Promila Dua, a general practitioner, who gave evidence concerning the general wellbeing of the Claimant when she had been recently seen, and the evidence is consistent with the previously identified physical health conditions of the Claimant and the advancement of mental health concerns and emotional

depression arising from the inevitable deterioration over time in her health.

9. The judge had a range of other evidence which dealt with a variety of the issues, not least the extent to which the judge found that there was a measure of consistency between the information provided previously by way of medical evidence and family evidence concerning the Claimant's health.
10. Ultimately, I was told by Mr Bazini and it was no disputed, the conclusions reached by Dr Singh who had known of the Appellant before the past ten years, was expressed in the following terms;

"In summary, I have no doubt, that Mrs Kaushal's physical and emotional state is now at such a state that she needs 24 hour reliable care, which in my professional opinion can only be provided by her family."
11. Mr Bazini does not suggest that there is not 24 hour care available in India but rather there is not the kind of care necessary to address both the claimant's physical health problems and those mental problems associated with the deterioration in her health, her loneliness and those other matters recited in the evidence. As such, therefore, whereas paragraph 35 and to a degree 34 of Appendix FM-SE address the issue of the availability and appropriateness of care, they do not address, as the evidence did before the judge, the particular circumstances.
12. By paragraph 34 of Appendix FM -SE it states

"Evidence that, as a result of age, illness or disability, the applicant requires long term personal care should take the form of: (a) (independent) medical evidence that the applicant's physical or mental condition means they cannot perform every day tasks; and (b) this must come from a doctor or other health professional."
13. Mr Bazini argued that the judge correctly reached and considered the evidence. Indeed the grant of permission does not suggest that the conclusions reached by the judge are not sustainable. Rather by reference to paragraph 35 of Appendix FM-SC was the issue taken: Is there independent evidence that the applicant is unable, even with the practical and financial help of the Sponsor in the UK, to obtain the required level of care in the country where they are living should be from: (a) a central or local health authority; (b) a local authority; or (c) a doctor or other health professional.
14. Reading the determination as a whole, and with particular regard to the evidence provided by Rockland Hospitals through Dr Singh, it appeared to me that there was evidence before the judge to conclude as he did that the Claimant met the requirements of needing family care which could not, it seems on the evidence the judge accepted, be provided in India.

15. In those circumstances whilst I might well not have reached the same conclusion that is not the basis on which an error of law is to be established.
16. In those circumstances, therefore, I find that the judge had the material before him upon which he was entitled to reach the conclusion that the Appellant met the requirements of Appendix FM. The original Tribunal's decision stands.

**NOTICE OF DECISION**

The appeal of the ECO is dismissed.

No anonymity direction is made.

Signed

Date 26 March 2015

Deputy Upper Tribunal Judge Davey