



IAC-FH-NL-V1

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

Appeal Number: OA/02653/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 7 October 2015**

**Decision & Reasons Promulgated  
On 13 October 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE HILL QC**

**Between**

**MS KANTABEN BHOGILAL PAREKH  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

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

Respondent

**Representation:**

For the Appellant: Ms S Pinder, Counsel instructed by Irving & Co Solicitors  
For the Respondent: Ms A Everett, Home Office Presenting Officer

**DECISION AND REASONS**

1. This is an appeal brought with the permission of First-tier Tribunal Judge Colyer to challenge the decision of First-tier Tribunal Judge Hosie which was promulgated on 23 April 2015. It arises out of the refusal of the Entry Clearance Officer concerning the appellant's wish to come to the United Kingdom as a dependent relative.
2. The appellant was born on 1 June 1949 and is an Indian national. She applied for entry clearance. By notice of refusal dated 22 January 2014 and a subsequent review dated 5 April 2014 her application was refused on the basis that she did not meet all the requirements of paragraph E-

ECDR.1.1 of Appendix FM to the Immigration Rules. An appeal was made to the First-tier Tribunal on the basis that the decision was not in accordance with the Immigration Rules not was in compliant with the European Convention on Human Rights and in particular Article 8, which protects private and family life.

3. The appellant has suffered from mental illness for some time. It was diagnosed as frontotemporal dementia in 2013. Prior to that it had been understood she was suffering from some form of depressive illness. Her husband died in 1997 and she has three children, two sons and one daughter, who currently live in the United Kingdom with their families. The appellant visits her family members in the United Kingdom and they visit her in India. At the time the First-tier Tribunal Judge considered the matter, the appellant's last visit to the United Kingdom had been from September 2012 until February 2013.
4. Section E-ECDR.2.5 of the Immigration Rules includes the following:

“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.”

In discussing and analysing the evidence the First-tier Tribunal Judge came to the inevitable conclusion that this particular provision was not satisfied and it therefore followed that the appellant's claim under the Immigration Rules could not succeed. Care is available in India, and there was nothing to suggest it was not affordable. There is no appeal against the judge's findings and conclusions in relation to the Immigration Rules.

5. It is the discrete analysis and conclusion made by the First-tier Tribunal Judge in relation to Article 8 which is the subject of the current appeal. The grounds which were settled by Counsel have been argued before me by Ms Pinder who was not their author but she adopts all three grounds and in her very helpful and clear submissions has developed them before me in oral submissions.
6. The first ground is put on the basis that the First-tier Tribunal Judge failed to make findings on material matters and it is suggested that the judge did not make findings as to whether family life existed between the appellant and the appellant's family members in the United Kingdom nor was there an attempt to identify the strength or quality of the appellant's relationships with her children and grandchildren whose best interests would be a primary consideration of any decision to exclude the appellant from the UK.
7. It was heralded in the granting of permission, that there may not be very much in this ground because from the fact that the judge works his way successively through the five questions commended in the decision in

**Razgar [2004] UKHL 27** it is implicit that the judge did make findings as to there being a private life and in doing so went on to consider the remainder of the questions. Looking at paragraph 27 of the determination, where the first of the **Razgar** questions is addressed, the judge quite properly considers family life in the circumstances of the substantive findings made earlier in the determination. Ms Pinder, wisely, did not press this first ground.

8. The second two grounds of appeal can usefully be read together. Ground 2 makes complaint that the judge's proportionality analysis was based upon an irrational conclusion that the appellant does not require full-time care and reference is made to a particular segment in paragraph 33 of the determination. The thrust of ground 3 is that in the proportionality analysis irrelevant factors were taken into account and relevant factors were left out of account.
9. The judge's analysis of the Article 8 considerations (mindful that the claim failed to meet the requirements of the Immigration Rules), is full, fair, complete, orderly and balanced. It begins at paragraph 22. In paragraph 24 it makes reference to the guideline authority of **Razgar** to which I have already referred and in particular the five questions to be considered and the proportionality analysis to which they give rise. It is quite clear to any reader of that determination that the First-tier Tribunal Judge worked through each of those five questions, resolving them appropriately.
10. It is instructive to refer back to an earlier section of the determination in which the appellant's mental health condition is examined and where the First-tier Tribunal Judge makes express findings, giving reasons. Paragraph 17 reads:

"It is accepted that the appellant has a mental health condition in respect of which she appears to be in receipt of prescribed medication. Taken as prescribed this ought to be alleviating some of the effects of her mental illness. No evidence was led that her taking of medication was supervised. This could be arranged if not already in place. There are care homes in India. No evidence was led that research had been carried out by the family regarding availability and suitability for the appellant. If the appellant does require 24/7 care and supervision then this is a possible solution as is the option of a live-in carer. It was clear that finances are available to the appellant and these could be used to fund her care and supervision needs. Whilst it is true that people with dementia and mental illness benefit from routine and familiarity, this could be provided by nursing staff in a care home or by a dedicated full-time live-in carer. However desired it is not necessary that this care be delivered by a close family member. On the contrary a person with frontotemporal dementia may benefit more from being cared for by someone who is medically qualified."
11. In addressing the **Razgar** questions the judge considered at paragraph 27 considered whether there had been an unjustified lack of respect for the appellant's private and family life having regard to positive obligations on the United Kingdom. The second question, concerning the gravity of any interference for the purposes of Article 8, was addressed in paragraph 8.

The careful and nuanced analysis of the First-tier Tribunal Judge reads as follows:

“Reference is made to the stress placed on the appellant and her family in the UK. Surely this can be alleviated by providing the right care for her in India and by frequent family visits. Care of the elderly places stress on all families, whether at home or abroad. I accept the respondent’s Counsel’s submission that the sponsor and his extended family did not appear to have made provision for their mother’s old age. She had mental health issues for a while before the application. If her mental health has deteriorated then full consideration must be given to adapting her care in India before it can be said that her needs cannot be adequately met in India. This is proportionate and no evidence was provided that this has been done.”

12. The First-tier Tribunal Judge went on to consider the third question, namely whether the interference was in accordance with law. Based on the findings under the Immigration Rules (which are not challenged) this conclusion was clearly justified.
13. The fourth question was whether any such interference in a democratic society is in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime or the protection of health or morals or for the protection of the rights and freedoms of other. The judge found, not surprisingly, that the interference was necessary in the interests of immigration control and was in the proper pursuance of lawful immigration control.
14. The fifth and final test under **Razgar** was whether the interference was proportionate to the legitimate public aim sought to be achieved. The First-tier Tribunal Judge made reference to the material which was before the Tribunal dealing with emotional stress including a factsheet from the Alzheimers Association. The judge accepted respondent’s Counsel’s submission that missing one’s family does not qualify an applicant in terms of the Immigration Rules. The judge properly exercised the balancing test of proportionality and came to the conclusion that there was no merit in the appeal so far as the appellant’s human rights were concerned.
15. I have reviewed with care the judge’s findings, the judge’s reasoning and the judge’s conclusions. I have had regard to the arguments advanced today suggestive of error of law. I can perceive no error of law on the face of this determination. It is an entirely proper and fulsome analysis as commended in the judgment of **Razgar**. Full attention is given by the judge to the quality of family life enjoyed by the appellant and her family and there is nothing irrational in the conclusions which the judge reached. Full time care is available for the appellant in India and there is nothing to suggest it is not affordable. In all the circumstances, though not without sympathy for the appellant and her family, I am drawn inevitably to the conclusion that this appeal must be dismissed.

### **Notice of Decision**

The appeal is dismissed.

No anonymity direction is made.

Signed *Mark Hill QC*  
Deputy Upper Tribunal Judge Hill QC

Date 12 October 2015

**TO THE RESPONDENT**  
**FEE AWARD**

I have dismissed the appeal and therefore there can be no fee award.

Signed *Mark Hill QC*  
Deputy Upper Tribunal Judge Hill QC

Date 12 October 2015