IAC-FH-AR-V1

Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/08500/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 8 June 2015	**On 12 June 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE DAVID TAYLOR

Between

MRS VIJAYALUXMY MAHESWARAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:
For the Appellant: Mr A Alam, Legal Representative,
For the Respondent: Mr E Tufan, Home Office Presenting Officer

DECISION AND REASONS

1. Although the appellant to this appeal is, strictly, the Secretary of State I have for the sake of consistency continued to refer to the parties by their original First-tier Tribunal designations. Thus, the Secretary of State continues to be described as "the respondent".

2. The appellant is a 69 year old citizen of Sri Lanka (born 25 August 1945) who appealed against the respondent's decision of 16 June 2014 refusing her application for entry clearance to the United Kingdom as the adult dependent parent of her son (and sponsor) Mr Vaheesan Maheswaran. He

is a British citizen resident and settled in the UK. The application was made on the basis that the appellant met the requirements of Appendix FM of the Immigration Rules and she relied in particular on Rules E-ECDR.2.4 and E-ECDR.2.5. The essence of those Rules are that the applicant "must as a result of age, illness or disability" require long term personal care to perform everyday tasks" and that 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 the country who can reasonably provide it; or (b) it is not affordable."

3. The Entry Clearance Officer refused the application on 18 June 2014 by reference to those Rules. The appellant's appeal to the First-tier Tribunal was allowed by First-tier Tribunal Judge S D Lloyd in a decision promulgated on 12 February 2015.

4. In the judge's decision, he found [18] that paragraph E-ECDR.2.4 was satisfied and he indicated [19] that the appeal

> "… hinges on E-ECDR.2.5 and as to whether the appellant is unable to acquire the required level of care, even with the practical and financial help of the sponsor, because it is unavailable and there is nobody in the country who can provide it or it is not affordable".

The judge found, after giving reasons, that "on balance" E-ECDR.2.5 was satisfied and he allowed the appeal.

5. The Secretary of State sought permission to appeal and permission was granted by First-tier Tribunal Judge Ransley on 13 April 2015. The grounds impliedly accepted that E-ECDR.2.4 was met but argued that, on the evidence, the judge's approach to E-ECDR.2.5 was wrong and that there was insufficient evidence before the Tribunal for the judge to have allowed the appeal on that ground.

6. It is for the Secretary of State in this case to satisfy me that there was a material error of law in the decision of the First-tier Tribunal such that it should be set aside. Mr Tufan acknowledged that subparagraph 2.4 was not in issue but the challenge was in relation to 2.5 which provided that it is for the appellant to satisfy the Tribunal either that the level of care in Sri Lanka was not available and that there was no person who could reasonably provide it or that it was not affordable. He submitted that the judge's criticism of the Entry Clearance Officer's interview [17] was not a just criticism and that the interview record showed that the interview was adequate: see in particular questions 17, 23 and 31 of the interview record. He also submitted that although the judge "on balance" found that 2.5 was satisfied, he did not give adequate or sufficient reasons for making such a finding having regard to the fact that the burden of proof is on the appellant.

7. In reply, Mr Alam argued that the grounds as well as the submissions already made did no more than simply disagree with the findings of the

First-tier Tribunal Judge and the weight that the judge chose to place on the sponsor's evidence. It was clear from the decision that the judge found the evidence of the sponsor and of the doctors who had given medical reports to be reliable. The decision was well within the judge's discretion based on that evidence.

8. I reserved my decision, but having now reviewed all the evidence as well as making a careful consideration of the First-tier Tribunal decision I am satisfied that there was no error of law such that the decision should be set aside. The judge gave a detailed and thorough decision making appropriate and correct references to the Immigration Rules in question and, in particular, identifying the gaps in the evidence. He did not overlook them and it was clear that he took them into account when making his final decision. At [25] he made it clear that his decision was "on balance" and he thereby correctly identified the standard of proof that he was obliged to apply. The judge's reasons and summary of the evidence were clearly set out at [16] – [24]. His decision could not by any stretch of the imagination be regarded to be perverse or against the overall weight of evidence. On this basis I am satisfied that there was no error of law in his decision and the decision shall stand.

Notice of Decision

The decision of the First-tier Tribunal did not contain any material error of law. The decision shall stand.

There has been no request for an anonymity direction and none is made.

Designated Judge David Taylor
Deputy Upper Tribunal Judge
11 June 2015