



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

Appeal Number: OA/20794/2013

THE IMMIGRATION ACTS

Heard at Manchester

On 23rd January 2015

**Decision & Reasons
Promulgated**

On 5th February 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

ENTRY CLEARANCE OFFICER - CHENNAI

Appellant

and

**HARIET RASANAYAGAM
(ANONYMITY ORDER NOT MADE)**

Respondent

Representation:

For the Appellant: Mr G Harrison, Senior Home Office Presenting Officer

For the Respondent: Miss R Frantzis of Counsel instructed by Solidum Solicitors

DECISION AND REASONS

Introduction and Background

1. The Entry Clearance Officer (ECO) appeals against a determination of Judge of the First-tier Tribunal Ghaffar promulgated on 5th August 2014.
2. The Respondent before the Upper Tribunal was the Appellant before the First-tier Tribunal and I will refer to her as the Claimant.

3. The Claimant is a female citizen of Sri Lanka born 23rd June 1926 who applied for entry clearance to join her son in the United Kingdom as an adult dependant relative.
4. The application was refused on 16th October 2013 with reference to E-ECDR.2.5 of Appendix FM which I set out below;

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 there is no person in that country who can reasonably provide it; or
 - (b) it is not affordable.
5. The ECO found that the Claimant was currently receiving the care she needed from family friends and her son (the Sponsor) in the United Kingdom was providing financial support. The ECO was not satisfied that the Claimant would be unable to obtain the required level of care in Sri Lanka.
 6. The appeal was heard by Judge Ghaffar (the judge) on 3rd July 2014. After hearing evidence from the Sponsor and his wife, the judge found that the evidence was credible, and that the Appellant would not be able to obtain the required level of care in Sri Lanka and allowed the appeal on that basis finding the criteria in E-ECDR.2.5 to be satisfied.
 7. The ECO applied for permission to appeal to the Upper Tribunal. In summary it was contended that the judge had failed to provide adequate reasons for finding that the required level of care was not available in Sri Lanka and that there is no-one in Sri Lanka who could reasonably provide it, and it was not affordable.
 8. It was submitted that the Sponsor's evidence was that care homes were not of the appropriate standard in the Claimant's area but had made no enquiries as to the availability and standard of care homes elsewhere in Sri Lanka and there was no evidence that the standard of care homes was not appropriate throughout Sri Lanka. It would not be unduly harsh for the Claimant to move elsewhere in Sri Lanka to move into a care home.
 9. If the Claimant and Sponsor could not afford the cost, it would not be unreasonable for the Sponsor to obtain extra employment and if the Sponsor could not afford the Claimant's medical costs in Sri Lanka, the same would apply in the United Kingdom and the Claimant would be a burden on public resources.
 10. Permission to appeal was granted by Judge of the First-tier Tribunal Levin who found it arguable that the judge had failed to give adequate reasons for his finding that the required level of care was not available for the Claimant in Sri Lanka. Judge Levin found it arguable that the judge's findings were not adequately explained and evidenced.

11. Following the grant of permission the Claimant lodged a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008. It was contended that the determination of the First-tier Tribunal disclosed no error of law. As to the ECO's argument that the Sponsor could obtain extra employment to meet any additional costs of care, it was pointed out that this was not argued before the judge and the Sponsor was not cross-examined on this point, and therefore there was no error made by the judge in not referring to this argument which had not been before him.
12. It was contended that the ECO had not placed any evidence before the judge as to the cost of private healthcare in Sri Lanka, and as to the Claimant being a burden on public resources, reference was made to paragraph 22 of the Sponsor's witness statement in which it was recorded that the Claimant would live with him and his family and there would be no cost to the state in respect of care home facilities.
13. In relation to adequacy of reasoning it was contended that the judge's credibility findings had not been challenged and the judge in paragraphs 9-11 had detailed the Sponsor's evidence of his income, his search for private individual care and his research into care homes in Sri Lanka. The judge had made an important and unchallenged finding at paragraph 22 of the determination that the Claimant required psychological support which she could only obtain if she is with her son, and therefore care provided by others would not be 'reasonable' for the purposes of E-ECDR.2.5.
14. Directions were issued that there should be an oral hearing before the Upper Tribunal to decide whether the First-tier Tribunal determination contained an error of law such that it should be set aside.

Submissions

15. At the hearing before me Mr Harrison relied upon the grounds contained within the application for permission to appeal and had no oral submissions to make.
16. Miss Frantzis relied upon the rule 24 response. I was asked to find that the credibility findings made by the judge in relation to the Sponsor's evidence had not been challenged. The finding that the Claimant needed psychological support from her son had also not been challenged.
17. Miss Frantzis submitted that the challenge to the determination was a reasons challenge and the judge had given adequate reasons, and had been entitled to accept the Sponsor's evidence and to find that the Immigration Rules were satisfied.

My Conclusions and Reasons

18. The challenge to the First-tier Tribunal determination is not based upon perversity or irrationality, but based upon the contention that inadequate reasons for findings have been given.

19. Guidance upon adequacy of reasons has been given by the Upper Tribunal in Budhathoki (reasons for decisions) [2014] UKUT 00341 (IAC) and I set out below the headnote to that decision;

It is generally unnecessary and unhelpful for First-tier Tribunal judgments to rehearse every detail or issue raised in a case. This leads to judgments becoming overly long and confused and is not a proportionate approach to deciding cases. It is, however, necessary for judges to identify and resolve key conflicts in the evidence and explain in clear and brief terms their reasons, so that the parties can understand why they have won or lost.

20. I have to decide whether the judge carried out the duty set out in Budhathoki and whether he has given adequate reasons for his conclusions and findings.
21. In my view the judge has made a decision that some other judges might not have done, but that is not the test, and not the issue to be decided, neither is the fact that the grounds submitted on behalf of the ECO disclose a strong disagreement with the judge's conclusions. My role is to decide whether the judge erred in law, and if he did, whether that error was material.
22. The issue to be decided by the judge was relatively narrow, and amounted to deciding whether the criteria set out in E-ECDR.2.5 was satisfied.
23. The judge found in favour of the Claimant recording in paragraph 20 that he based his findings on "all the evidence before me and have had regard to the oral evidence from the Sponsor and his wife". The judge found that the Appellant could not obtain the required level of care in Sri Lanka.
24. Paragraph 18 of the determination indicates that the judge applied the correct burden of proof, finding that the burden in relation to the Immigration Rules was on the Claimant, and decided the appeal using the correct standard of proof, that being a balance of probabilities.
25. The judge described, in paragraph 22, the Sponsor's evidence as credible, recording that the Sponsor was frank in giving evidence, and made concessions not necessarily beneficial to his case.
26. The judge had before him some documentary medical evidence sent from Sri Lanka, which detailed the Claimant's medical condition.
27. The judge concluded that the Appellant, at the relevant time, was being cared for by family friends which he found to be a short-term arrangement and not a solution to the Claimant's care requirements. The judge found that the Sponsor could not afford to pay for the Claimant to go into a care home, nor could he secure a private carer.
28. The judge's reason for making these findings was that he accepted the Sponsor's evidence as credible, in other words, he believed, to the correct standard of proof, the Sponsor's evidence.

29. Because he accepted the Sponsor's evidence, which was tested by cross-examination, the judge found the criteria set out in E-ECDR.2.5 to be satisfied and therefore allowed the appeal on that basis.
30. In my view the judge has adequately explained why he allowed the appeal, and this is because he believed, on a balance of probabilities, what the Sponsor told him.
31. The grounds make it clear that the ECO disagrees with the conclusions made by the judge, but the grounds do not disclose an error of law, as I conclude that the judge did give adequate reasons for his findings.

Notice of Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law.

I do not set aside the decision. The appeal of the Secretary of State is dismissed.

Anonymity

No order for anonymity was made by the First-tier Tribunal. There has been no request for anonymity, and the Upper Tribunal makes no anonymity order.

Signed

Date 29th January 2015

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT FEE AWARD

As the determination of the First-tier Tribunal stands, therefore the decision to make no fee award also stands.

Signed

Date 29th January 2015

Deputy Upper Tribunal Judge M A Hall