



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

Appeal Number: OA/21506/2013

THE IMMIGRATION ACTS

**Heard at Centre City Tower,
Birmingham
On 27th August 2015**

**Decision & Reasons
Promulgated
On 22nd September 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE JUSS

Between

MRS JIT KAUR
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Neville (Counsel)
For the Respondent: Mr I Richards (Senior HOPO)

DECISION AND REASONS

1. This is an appeal against the determination of First-tier Tribunal Judge E Lagunju, promulgated on 12th August 2014, following a hearing at Sheldon Court Birmingham on 12th June 2014. In the determination, the judge allowed the appeal of Mrs Jit Kaur. The Respondent Entry Clearance

Officer, 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 citizen of India, who was born on 5th December 1934. She appealed against the decision of the Entry Clearance Officer in New Delhi rejecting her application to come to the UK as an adult dependent relative under Appendix FM of the Immigration Rules, with specific reference to paragraph EC-DR.1.1. She wished to settle with her son in this country because she felt alone, and had a disability of age, illness, and a need of long-term personal care. The Respondent reasoned that the Appellant had a daughter in India, and also had lived all her life in that country, with other close relatives and friends to turn to for social support.

The Judge's Findings

3. The judge's findings were that,

“According to the evidence, which is not in dispute, the Appellant suffers from hypertension, diabetes mellitus with angina and bronchitis. She was also almost blind in one eye with her second eye now also affected due to the diabetes. The Appellant has provided a letter from her personal physician who confirms that diagnosis and states that she requires ‘constant care, especially in her daily routines’” (see paragraph 12).

4. The judge also went on to say that,

“According to the Sponsor, he has considered more long-term permanent care for his mother, however, because he is not present to supervise this, he states it is hard to trust his mother's care entirely to a stranger. His sister however is present in India and lives with her husband's family ten miles away, however for cultural reasons ... she is unable to offer her mother any significant assistance ...” (paragraph 15).

5. The judge further went on to conclude that, “The Appellant's daughter cannot provide the level of care required as she has her own family to care for. The local helper cannot provide the level of care required as she is only able to do a few hours a day and is still not available at night ...” (paragraph 19).

6. The appeal was allowed.

Grounds of Application

7. The grounds of application state that the judge failed to provide adequate reasons for findings that required the level of care not being available for the Appellant in India where she has a daughter who could assist her,

coupled with the Sponsor's financial assistance of adequate care from the long distance.

8. On 23rd September 2014, the First-tier Tribunal dismissed the application for permission to appeal.
9. However, on 5th January 2015, the Upper Tribunal granted permission to appeal.

Hearing

10. At the hearing before me on 27th August 2015, Mr Richards, appearing on behalf of the Respondent Entry Clearance Officer, stated that he would rely upon the Grounds of Appeal. He submitted that, although the judge had directed herself adequately at the outset in terms of the consideration of the evidence (see paragraph 6), the fact was that there was a daughter living just ten miles away, to whom the Appellant could turn to, and this had not been properly dealt with by the judge.
11. In reply, Mr Neville submitted that the emphasis on the daughter, who it is said is ten miles away, had never been properly raised in the initial hearing, but that the judge had, nevertheless, dealt with it foursquare by stating that, "The Appellant's daughter cannot provide the level of care required as she has her own family to care for" (paragraph 19).
12. Furthermore, there was a reference with the undisputed evidence (see paragraph 12) together with the doctor's letter confirming that the Appellant required "constant care, especially in her daily routines" (paragraph 12).
13. In addition, there was a clear finding that the Appellant did need long-term permanent care, and that the Sponsor was unable to arrange this from the long distance because he could not trust his care entirely to strangers. In these circumstances the Sponsor had done "his best to provide some daily care for her although it is clear that the care throughout the day and night is required ..." (paragraph 17).
14. As against this, the sponsoring son could look after his mother in this country (paragraph 20) and she could be adequately housed in his three storey five bedroom property (paragraph 21). Mr Neville also drew my attention to the case of **MR (permission to appeal: Tribunal's approach) Brazil [2015] UKUT 00029 (IAC)** which affirmed the rule of law in **Nixon (permission to appeal: grounds) [2014] UKUT 368**, where the President of the Tribunal had made it quite clear that a judge granting an application for permission to appeal to the Upper Tribunal must avoid granting permission in what, properly analysed, is no more than a simple quarrel with the First-tier Tribunal Judge's assessment of the evidence. Mr Neville submitted that this is exactly what had happened in this case.

No Error of Law

15. I am satisfied that the making of the decision by the judge did not involve 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. This is because in a specific number of paragraphs, the judge has given proper and sufficient consideration to all the issues that were before her. In paragraph 12 she recognises that the Appellant suffers from blindness in one eye and near blindness in another eye such that she needs constant care for her daily routine activities. Consideration was given at paragraph 15 to the Sponsor having taken into account the Appellant's long-term care (at paragraph 15).
16. The Sponsor had done his best to provide daily care (paragraph 17). The Appellant required meals at certain times throughout the day and her sugar levels were dropping in her blood and she often got breathless due to the angina and the percentage of her heart that is effectively functioning, "thus the level of care currently being provided is not sufficient" (paragraph 18).
17. It is to be noted in this case that the First-tier Tribunal declined permission to appeal on the grounds that,

"The judge carefully and properly considered the evidence and made appropriate findings which were open to the judge to make, including the Sponsor's oral evidence on the day of the hearing. The judge allowed the appeal under the Immigration Rules and not ECHR" (see paragraph 3).

In the circumstances, the strictures in **MR (permission to appeal) Brazil** do apply in this case. There is no basis for there being a finding of an error of law.

Notice of Decision

There is no material error of law in the original judge's decision. The determination shall stand.

No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

21st September 2015