IAC-AH-CJ-V1

Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: OA/04214/2014
OA/04215/2014

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 21st December 2015	**On 1st February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

NAVEEDA AKHTAR
GULZAR BIBI
(ANONYMITY DIRECTION NOT MADE)

Appellants

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the Appellants: Mr Subbarayan, instructed by Sivaramen Solicitors
For the Respondent: Ms Brocklesby-Weller, Senior Home Office Presenting Officer

DECISION AND REASONS

The Appellants

1. This is an application, with permission, to appeal against the decision of the First-tier Tribunal which refused the appeal both under the Immigration Rules and on human rights grounds, against the decision of the Entry Clearance Officer. The appellants

had applied for entry clearance to the United Kingdom as the adult dependent relatives under Appendix FM of the Immigration Rules and their applications were considered under paragraph EC-DR.1.1 of Appendix FM and refused on 24th February 2014.

2. The appellants are citizens of Pakistan born on 6th September 1979 and 1st January 1946 and are daughter and mother. Their sponsor Mr Symon Rasheed is the brother of the first appellant and the son of the second appellant.

3. The Entry Clearance Officer considered the medical evidence available with respect to the first appellant and determined that the long-term care required by the first appellant was available in Pakistan. In relation to the second appellant the Entry Clearance Officer had considered the assertion she was unable to provide care for the first appellant but determined that she had not demonstrated that she required long-term personal care to perform everyday tasks. Those decisions were reviewed by the Entry Clearance Manager who was satisfied that there was no new evidence presented and the treatment required by the first appellant was available in Pakistan.

4. An application for permission to appeal in the first instance to the First-tier Tribunal was refused on the grounds that the decision constituted no more than a disagreement with the judge's findings which were open to him.

5. The application was renewed to the Upper Tribunal on the grounds that the Home Office IDI had not been adhered to and that the judge failed to make any reasoning and failed to apply the Home Office policy which was an error of law. The judge failed to apply E-ECDR.2.5(a) of Appendix FM and this was an error of law. The judge appeared to be saying that despite their illness and old age they could travel over 150 miles to seek treatment on their own on a regular basis and this was not reasonable. It was also asserted with reference to Article 8 that **Huang v SSHD [2007] UKHL 11** was not given any consideration and this was an error.

6. It was submitted that the sponsor was the only person providing for the appellants and there was no-one else as the sister lived some 140 miles away from the appellants. It was not possible for her to assist the appellants who need to attend the rheumatology department which is 150 miles away. For cultural reasons the appellants could not live with the sponsor's sister, and although the judge acknowledged the Home Office Guidance on Elderly Dependant Relatives at paragraph 2.2.3, which indicates how to interpret "*no person in the country who can reasonably provide care*" he failed to take this into account. He also failed, it was asserted to take into account the distance between where the sponsor's sister lived and the appellants lived.

7. The evidence provided was not disputed as incorrect and that the letter from the rheumatologist confirmed that the appellant had missed her appointment and there was evidence to show that the sponsor had taken unauthorised leave to care for the appellants in Pakistan.

8. There was no-one who could reasonably provide the required level of care and the judge had not applied IDI paragraph 2.2.3 and thus failed to interpret and apply the Section E-ECDR.2.5. The issue was not that no person in Pakistan who could provide the care but who could reasonably provide it.

9. Permission to appeal was granted by the Upper Tribunal which merely stated that the grounds were arguable.

10. At the hearing before me I was provided with a copy of the Home Office guidance and Mr Subbarayan confirmed that the sponsor had sent money to support the care of the mother and sister in Pakistan.

11. I asked him to point me to the evidence in relation to the mother who was now 68 years old but it appeared that the medical evidence provided was in relation to the sister. There was little evidence provided in relation to the mother. The medical evidence of Dr Aziz referred to the condition of the sister and Mr Subbarayan underlined the point that the first appellant was expected to travel 140 miles for her treatment and the letter was evidence that she had missed those appointments.

12. When asked about the cultural aspects, Mr Subbarayan pointed out that the sponsor who was the male of the family had the responsibility to take care of his mother and sister as the other sister was married. Even with the sending of money it was difficult and not practical for the appellants to care for themselves in Pakistan. The sponsor has nearly lost his job whilst trying to care for them.

13. Ms Brocklesby-Weller submitted that the judge had recorded all the evidence and recorded the issues of cultural factors at [22] and recorded the medical evidence. The treatment was in place and care was not limited to family members. The judge had followed the guidance and the decision disclosed no error of law.

14. The Immigration Rules in relation to entry clearance of an adult dependent relative are set out at Appendix FM E-ECDR of the Immigration Rules. In particular the requirements include ECDR.2.4 and ECDR.2.5:

> 'E-ECDR.2.4. The applicant or, if the applicant and their partner are the sponsor's parents or grandparents, the applicant's partner, must as a result of age, illness or disability require long-term personal care to perform everyday tasks.
>
> E-ECDR.2.5. 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'.

15. The Immigration Directorate Instructions in relation to family members under Appendix FM of the Immigration Rules effective from 13th December 2012 sets out at 2.2.3 how the phrase "no person in the country who can reasonably provide care" should be interpreted. This states:

> "The ECO should consider whether there is anyone in the country where the applicant is living who can reasonably provide the required level of care.
>
> This can be a close family member:
>
> - son,
> - daughter,
> - brother,
> - sister,
> - parent,
> - grandchild,
> - grandparent
>
> Or another person who can provide care, e.g. home help, housekeeper, nurse, carer or care or nursing home.
>
> If an applicant has more than one close relative in the country where they are living those relatives may be able to pull resources to provide the required care.
>
> The ECO should bear in mind any relevant cultural factors, such as in countries where women are unlikely to be able to provide support."

16. On reading the decision of the First tier Tribunal I find the judge set out the evidence as given by the sponsor in his written statement and his evidence-in-chief and that the sponsor came to the UK in 2003 but returned to see the appellants in 2004, 2006, 2009 and most recently in 2013. The first appellant, the sponsor's sister, had rheumatoid arthritis and had a deformed hand, knee joint, shoulder and foot. It was submitted that the mother was 67 years old and had no problem looking after his sister until 2009 but since then her condition had deteriorated.

17. At paragraph 10 the judge set out the evidence as follows:

> "10. His sister stopped receiving treatment for two years because where they lived there was no specialist medical help within 150 miles. In addition there was no-one available to take her to see the specialist. Previously his mother had been well enough before to take her for treatment but since 2009 his mother has not been able to take her to see the specialist.
>
> 11. The Sponsor stated that he has two sisters; one living in Dubai and the other living in Rawalpindi which is 140 miles from where his mother lives. The Sponsor stated that in Pakistan daughters cannot look after their mothers once they are married. It is down to their husband's decision if they are able to look after their mother. His daughter Rasheeda lives in Rawalpindi and her husband is not working. His other daughter, Farida lives in Dubai. The Sponsor has no evidence to show their financial circumstances.

> 13. The Sponsor stated that he would be able to cover the cost of the Appellants medical treatment for the next five years. He stated that the medicines they need are not expensive. He stated that what they needed was daily care such as feeding, cleaning and clothing. He says that his income is £38,000 per annum and his wife does not work. He has provided copies of his bank statement and says that the balance is low because he has just had to pay for the repair of his boiler."

18. It was also clear that the judge recorded the Immigration Directorate Instructions at [22] of his decision and that he had noted the relevant provisions of those instructions.

19. The judge recorded that the appellants submit they had demonstrated how far they had to go to travel to get medical help in Pakistan and the lack of specialists in rheumatology.

20. The judge found that he was satisfied that the appellants fulfilled the requirements of paragraph E-ECDR.2.4 in that they faced physical challenges to accomplishing everyday tasks as a result of their medical condition. I find the judge was generous in this regard bearing in mind there was no specific medical evidence provided in relation to the second appellant, the mother, but there was clear medical evidence in relation to the first appellant. That was provided by way of letter dated 9th September 2013 in relation to Miss Akhtar but as pointed out "her disease seems to be reasonably controlled with the 10mg prednisolone".

21. The conclusions and findings of the judge are essentially at paragraph 32 where he stated the following:

> "32. The Sponsor has arranged for the Appellants to receive care in their home in relation to cooking, cleaning and clothing. I have received no evidence to satisfy me that care in the home is not available to the Appellants funded by the Sponsor. I have noted concerns regarding the honesty of the person providing the home help but that is a matter to be addressed by changing the person providing the care. I have noted and accept the there is a shortage of rheumatologists in Pakistan and that the nearest specialist medical care is 140 miles away. However, I have no evidence as to how often such a specialist needs to be visited. I have no evidence to suggest that the medications needed by the Appellants are not available to them."

22. It is clear that the judge accepted that the sponsor had arranged for the appellants to receive care in their home in relation to cooking, cleaning and clothing, and he had received no evidence to satisfy him that care in the home was not available as funded by the sponsor. It was not that the judge was expecting the appellants to be cared for by any other family member and to that end I cannot see that cultural factors are relevant because it was the appellants' case that the sponsor had been funding them financially and as a male he was indeed funding the appellants. The judge was not expecting the other sister to step in to assist.

23. The judge had recorded that he accepted that there was a shortage of rheumatologists in Pakistan and the nearest specialist medical care was 140 miles away but as he stated there was no evidence as to how often such a specialist needed to be visited and it is clear from the letter produced that this was not confirmed and there was no evidence to suggest that the medications needed by the appellants were *not* available to them. In the absence of further more detailed medical evidence or, , the judge was not satisfied that they were unable to obtain the required level of care in the country where they are living because it was not available and there was no person in that country who could reasonably provide it.

24. I am not persuaded that the judge approached the consideration of "reasonably" without considering the IDIs or the Immigration Rules. It is clear that he did not expect the relatives to undertake the physical care which was required and indeed he confirmed that if there were concerns regarding the honesty of the person providing the home help, that they could change the person providing the care. Nor did he ignore the distance to be travelled but was not persuaded that the medications needed by the appellants were not available. As I stated there was no medical evidence in relation to the mother and the judge clearly found no evidence of the regularity required for the visits to the specialists or that they could not be afforded help and no doubt this would include a driver to the relevant hospital for appointments. The Guidance specifically refers to relatives '*Or another person who can provide care, e.g. home help, housekeeper, nurse, carer or care or nursing home'*. There is no reason to suppose that this could not include a driver and or escort but as the judge specifically notes there was an absence even of the details of such specialist visits.

25. The judge did note the decisions of **AE (Algeria) v SSHD** [2014] EWCA Civ 653 and **GS (India) v SSHD** [2015] EWCA Civ 40 and elaborated on the principles enunciated in those cases such that the fact that the level of care available in the UK is higher than that in the country of residence is not evidence that the care available in that country is insufficient. Indeed, Paragraph 13 confirmed that the sponsor would be able to cover the costs of the appellants' medical treatment for the next five years and that "he stated that the medicines they need are not expensive. He stated that ***what they needed*** was daily care such as feeding, cleaning and clothing" [my emphasis]. The judge recorded that "the Sponsor confirms that he pays for someone to look after the appellants as he currently has no other choice" (paragraph 26). This was not a recording of evidence that the appellants were in want of travel arrangements to the hospital.

26. There was little medical evidence in relation to the first appellant and no medical evidence in relation to the second appellant and in effect the judge found that the appellants had not made out their case. In the light of the above I am not persuaded that there is an error in this decision and that the judge has failed to follow the Immigration Rules or the guidance. The judge simply found that the appellants had not made out that they were unable to obtain the required level of care because '*it is not available and there is no person in that country who can reasonably provide it'*.

27. I find no error of law and the application for permission to appeal is merely a disagreement with the findings of the judge.

No anonymity direction is made.

Signed Date 29.1.2016

Deputy Upper Tribunal Judge Rimington