Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: OA/16579/2013**

THE IMMIGRATION ACTS

Heard at Bradford	**Decision & Reasons Promulgated**
On 9 February 2016	**On 10 May 2016**

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

KARTHIK RAJARAMAN SARASWATHY
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER - CHENNAI

Respondent

Representation:

For the Appellant: Mrs Anusha Rajaraman (sponsor)
For the Respondent: Mr M Diwnycz, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, Karthik Rajaraman Saraswathy, who was born on 11 September 1988 is a male citizen of India. He is the brother of the sponsor, Mrs Anusha Rajaraman who is a British citizen. By a decision dated 26th August 2014, the appellant was refused entry clearance to the United Kingdom as the adult dependant of the sponsor. The parties agree that the appellant was able to satisfy the Immigration Rules save for paragraph E-ECDR2.5:

> 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.

2. The appellant's appeal was dismissed in a determination promulgated on 2 July 2014 by First-tier Tribunal Judge Tunnock. Judge Tunnock had found at [37]:

> The difficulty with the application is that it is not clear exactly what needs the appellant has that cannot be met in India. I acknowledge that the level of sophisticated support that can be found in the UK may not be available but that support has not been available to the appellant to date. There is no evidence that the appellant's father has any particular nursing or clinical skill or whether he will have the affection of a parent for his son which would enhance the quality of the support which he has been providing. I also accept that caring for the appellant would become more difficult as his father grows older but I am not satisfied that the appropriate domestic support will be without specialist training in respect of autism, is not available. I am not satisfied that the evidence shows that the equivalent of care assistance cannot be sourced to assist the appellant with his daily needs set out in various reports. Dr Varley provided some guidance for visual timetables to aid the appellant's progress and it appears that they can all be implemented without specialist intervention. I accept that it would almost certainly be better for the appellant to come to the UK where he would live with family members who are extremely anxious to do the best for him. However, it is not the test that is applied under the Immigration Rules. The burden is on the appellant to show that he is unable to obtain the required level of care even the practical and financial help of the sponsor because it is either not available and there is no person in India he knew who can provide it or it is not affordable. The issue of affordability has not been raised understandably given the financial circumstances of the sponsor. I set out above I am not satisfied the appellant has discharged the burden to establish that the required level of care is not available.

3. This appeal throws up a number of difficult issues. Paragraph E-ECDR2.5 begs the obvious question as to the meaning of "the required level of care in the country where they are living". The use of the words "in the country in which they are living" suggests a proper construction of "required" care should be determined by reference to the standards of the appellant's country of return. There is also the question of the ability of the appellant's father to continue caring for him and whether he is, at the present time, providing the "required level of care". At [37] Judge Tunnock acknowledged that the appellant's father has no "particular nursing or clinical skill" but found that he was able to enhance the quality of the support he provided to the appellant because of the natural tie of affection between parent and son. I am not sure that that is what is intended by the Immigration Rule when it speaks of a "required level of care". The nature and extent of care required is, in my opinion, properly to be established by evidence relating to the particular mental and

physical condition of the applicant; it does not necessarily follow that a close relative without any particular skills in providing care can meet the requirement. I am also satisfied that this is a case in which not only current circumstances but those reasonably likely to occur in the future should be taken into account in assessing whether the appellant meets the Immigration Rules. The relevance of prospective or future events should be considered in this instance as it often is, for example, in determining the likely progress of contact between a non-resident parent and a child. Having considered the evidence and the submissions of the sponsor and the respondent's officer, I am satisfied that the appellant's father is either incapable of providing the required level of care for the appellant at the present time. Further, if the appellant and his father are getting by, so to speak, at present that is not a situation which I find will continue in the medium to longer term.

4. I am satisfied also that there was before Judge Tunnock evidence which plainly indicated that the care was simply not available for those with severe autism in India. There is both general and specific evidence (i.e. relating to this appellant) from the organisation, Action for Autism, which operates out of New Delhi, India. The general evidence [149] indicates that "the needs of autistic children in India are not being met in either the regular or special educational systems and that there are "not enough services to meet the needs of mentally and retarded children and adults in India let alone those who are autistic." The evidence specific to the appellant (in the form of an email – see [151]) records that there are "some residential settings for adults that are coming up across the country" although there are no "specialist... 24/7 care services in Chennai." The letter of Dr Avula [74] also records that there are "not government institutes for autistic children in India."

5. I am fully aware that the Immigration Rules does not seek to strike a comparison between the quality and availability of services in the United Kingdom and India; the United Kingdom can no more offer assistance to all autistic people from India any more than it can offer a good education to those who may be denied it in their own countries. However, the evidence in this case is quite striking, namely that autism does not only fail to attract specialist services in India but is largely ignored or left undiagnosed, in the latter case because members of the medical profession see little point in diagnosing a condition for which no treatment whatever exists. Having found, therefore, that the "required level of care" cannot be provided by the appellant's father the evidence points very strongly towards a further finding that it cannot be provided by anyone else in India notwithstanding the ability of the United Kingdom sponsor to pay for it.

6. Judge Tunnock's solution to this difficulty was to conclude that "the appropriate domestic support, albeit without specialist training in respect of autism is ... available." The medical evidence indicates that the appellant obeys simple commands and that he is not aggressive but it follows from Judge Tunnock's finding that, if his father is unable to care for him, the appellant would spend his entire day alone, without any form of

social interaction save for the short visits of domestic help who would provide his food and clean his home. The question arises as to whether that level of care can properly be described as "the required level of care" whether by reference to the standards of the United Kingdom, India or elsewhere. I have to say that I find that it does not. In the particular circumstances of this appeal, I find that Judge Tunnock did err in law by concluding that the Appellant could not meet the requirements of the Immigration Rules. I find that he does meet the requirements of paragraph E-ECDR2.5 for the reasons which I have given above. I therefore set aside Judge Tunnock's determination (although I acknowledge the characteristic thoroughness with which he has conducted his analysis) and have remade the decision by allowing under the Immigration Rules the appeal of the appellant against the decision of the Entry Clearance Officer dated 26 August 2014.

Notice of Decision

7. The decision of the First-tier Tribunal promulgated on 2 July 2014 is set aside. I have remade the decision. The appellant's appeal against the decision of the Entry Clearance Officer dated 26 August 2014 is allowed under the Immigration Rules.

No anonymity direction is made.

Signed Date 2 April 2016

Upper Tribunal Judge Clive Lane