



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: HU/13195/2015

THE IMMIGRATION ACTS

Heard at Field House
On 11 June 2018

Decision & Reasons Promulgated
On 22 June 2018

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

MRS GURMAIL KAUR
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Iqbal, Counsel, instructed by Visa Expert Ltd
For the Respondent: Mr P Duffy, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is a challenge by the Appellant against the decision of First-tier Tribunal Judge R G Walters (the judge), promulgated 30 May 2017, in which he dismissed her appeal against the Respondent's refusal of entry clearance, dated 5 November 2015. The Appellant had sought to join her daughter in the United Kingdom as an adult dependent relative. The relevant Immigration Rules are contained in Appendix FM and Appendix FM-SE.

The judge's decision

2. Sadly, between the applications for entry clearance being made and the hearing, the Appellant's husband passed away.

3. Under a sub-heading "My Findings of Fact" the judge proceeds to recite elements of the evidence before him ([7] to [14]). At that point he appears to set out a number of what had been described in the grounds as "personal suggestions" as to how the Sponsor might have been able to care for the Appellant in India in one way or another. Finally, at [17] the judge states as follows:

"The Sponsor's evidence was that she does not wish to put her mother into a care home and that none are available in her home town of Bathinda. This, however, is not the test. The test is whether care homes for the elderly are available in India nationwide. The Appellant has produced no evidence to suggest that they are not."

4. Article 8 in its wider context was then considered. Ultimately the appeal was dismissed on all grounds.

The grounds of appeal and grant of permission

5. The grounds criticise the findings of the judge (such as they are) in relation to what the Sponsor might have been able to do for the Appellant by way of care. It is submitted that the judge engaged in undue speculation. The grounds also assert that the judge had erred in his overall Article 8 assessment.
6. In granting permission by a decision dated 26 February 2018, Upper Tribunal Judge Coker agrees that some of the judge's comments appear to be speculative but also indicated that any errors may not ultimately be material and that a fresh application might possibly be a more appropriate avenue to pursue in due course.

The hearing before me

7. The Sponsor did not attend the hearing herself, but Mr Iqbal assured me that he was content to proceed in her absence. I began by asking Mr Iqbal what evidence there had been before the judge as to the non-availability of relevant care in India, as opposed to simply the home city. I indicated that on my reading of the letter from a city councillor, it appeared as though the issue of care homes was geographically limited to that place and did not relate to the country as a whole. In response Mr Iqbal suggested, somewhat tentatively, that the letter was not restricted in the way I had indicated. He did appreciate that the appropriate test under E-ECDR.2.5 of Appendix FM was whether or not appropriate care was available in the "country of origin", i.e. India as a whole.
8. Mr Duffy relied on [17] of the judge's decision. He submitted that the letter previously referred to was limited to provision of care homes in the home city. He also noted that under Appendix FM-SE, specified evidence relating to the provision of appropriate care had to come from a medical professional. The letter in evidence before the judge emanated from what appeared to be a local council official.

9. In response to this final point Mr Iqbal suggested that the Respondent could have exercised evidential flexibility as to the source of the evidence.

Decision on error of law

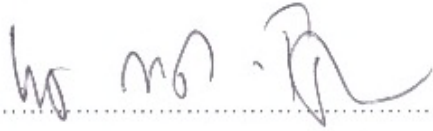
10. As I indicated to the representatives at the hearing, I conclude that there are no material errors of law in the judge's decision. In particular I conclude that on the evidence before him, the overall conclusion set out in [17] was one to which the judge was entitled.
11. I have to say, and with due respect to the judge, the fact-finding element of his decision is somewhat unclear, arguably fails to make clear findings on certain issues, and does indulge in speculation as to what the Sponsor might or might not have done herself. Even if these deficiencies could be described as errors, I conclude that they are not material to the outcome. I say this because of [17]. The judge was right to say that the test was not geographically limited but related to whether appropriate care for the Appellant was available in India. I am more than satisfied that the letter from the city councillor to which I have referred previously referred only to the provision of care in Bathinda City. On any sensible reading of that document it was not referring to India at large. There was, in truth, no evidence before the judge that appropriate care for the Appellant was simply unavailable throughout India. On this basis alone the Appellant's challenge must fail.
12. I also agree with Mr Duffy that the letter relied on by the Appellant did not come from a medical professional and so could not have complied with the specified evidential requirements under Appendix FM-SE. On this alternative basis, the Appellant would have been unable to meet the relevant Rules.
13. The Appellant's inability to meet the relevant Rules under Appendix FM was always going to be a very significant obstacle to success under Article 8 in general. In light of the case of BRITCITS [2017] EWCA Civ 368, the adult dependent relative Rules are Article 8-compliant. It is very difficult to see how the Appellant could have possibly succeeded outside the context of the Rules. With this in mind, the judge's fairly brief treatment of Article 8 in its wider context is adequate, with particular reference to [25] of his decision: a failure to meet the Rules amounted to what in effect was an insurmountable obstacle in the path of the Appellant.
14. For all of these reasons the Appellant's challenge fails and the decision of the First-tier Tribunal stands.

Notice of Decision

The First-tier Tribunal's decision does not contain errors of law.

That decision shall stand.

No anonymity direction is made.



Signed

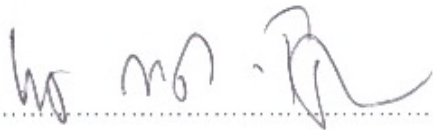
Date: 20 June 2018

Deputy Upper Tribunal Judge Norton-Taylor

TO THE RESPONDENT

FEE AWARD

I have dismissed the appeal and therefore there can be no fee award.



Signed

Date: 20 June 2018

Deputy Upper Tribunal Judge Norton-Taylor