



**Upper Tribunal
(Immigration And Asylum Chamber)
39405/2014**

**Appeal Numbers: IA/
IA/41542/2014**

THE IMMIGRATION ACTS

**Heard at: Taylor House
on 14 October 2015**

Promulgated

**Decision and Reasons
On 2 November 2015**

Before

Deputy Upper Tribunal Judge Mailer

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**MR JOEY ORIA LACA
MRS SHIRLEY BADILLO
(NO ANONYMITY DIRECTIONS MADE)**

Respondents

Representation

For the Appellant: Mr S Kandola, Senior Home Office Presenting Officer
For the Respondent: Ms C Bexson, counsel (instructed by Law Lane Solicitors)

DECISION AND REASONS

1. For the sake of convenience I shall refer to the appellant as “the secretary of state” and to the respondents as “the claimants”.
2. The claimants are nationals of the Philippines and are partners. The second claimant is dependent on the first. Their appeals against the decision of the secretary of state dated 26 September 2014 to refuse to issue them a derivative residence card under the Immigration (EEA) Regulations 2006 (“the 2006 Regulations”) as the primary carers of a British citizen resident in the UK were allowed under the 2006 Regulations by the First-tier Tribunal Judge, in a decision promulgated on 14 May 2015.

3. He found that the first claimant's mother works for about 37 hours a week and therefore cannot be said to be in need of care in line with the definition of the European Regulations. Although she has had '....some incidents whereby she has fallen over in the bathroom and needed assistance, this has been on an emergency basis rather than upon a permanent basis' [14].
4. He went on to find that "...In view of the fact that there did not seem to be the existence of another caregiver, relative or legal guardian, and that it is not reasonable to expect the [first claimant's] father to go into the care system when he has his own son who can look after him, I find that the first claimant acts as a primary carer for his father" [14].
5. He found that if the claimants were to be removed from the UK, the father will be deprived of effectively exercising his right of residence as there will be nobody to look after him other than his wife who is working [15]. However due to her own medical problems the Judge found that she would not be able to act as a primary carer for her husband. She will also not be able to give the same care that is being given by the first claimant as she is working 37 hours a week. He accepted that the second claimant is equally giving assistance to the father when she is not working [15].
6. Accordingly, he found that ".....on the basis given to the appellant's father that the first appellant and the second appellant amount to primary carers under the EEA Regulations. The role of the second appellant is that of sharing the responsibility with the first appellant" [15].
7. On 14 July 2015, First-tier Tribunal Judge Simpson granted the secretary of state permission to appeal. He stated that although the Judge found that the claimant's mother would not be able to act as a primary carer for her husband, it is not clear why he reached that conclusion and given that this is a particularly stringent test, cogent reasons are required.
8. Moreover, he stated that it is not clear why the claimant's father requires a primary carer, given that he does not suffer from severe mental or physical disability. It is not sufficient for the claimants to show that it might be convenient for them to care for their father and given that the claimant's mother is working a 37 hour week, she cannot be regarded as requiring care herself.
9. On behalf of the secretary of state Mr Kandola submitted that the Judge erred in failing to make any finding in respect of Regulation 15A(4A)(c) which provides that persons will satisfy the criteria in this paragraph if the relevant British citizen would be unable to reside in the UK or in another EEA state if the person were required to leave.
10. He submitted that there had been no suggestion from the claimant's mother's statement indicating any intention by her or her husband to return to the Philippines if the claimants were to leave. In fact, the first claimant himself stated that it would be difficult for his parents if he had to leave, again showing that they would remain in the UK.

11. Mr Kandola referred to paragraph 7 of the second claimant's (Ms Badillo's) witness statement dated 20 April 2015. There she simply stated that "...I believe they require our care in the UK and they will have to leave the UK if Joey leaves this country." However, apart from her "belief" in that respect, there was not even an assertion by the parents themselves that they will have to leave the UK in those circumstances.
12. He submitted that the Judge has not engaged with this. The Judge stated at [15] that if the claimants were removed, the father would be deprived of effectively exercising his rights of residence as there will be nobody to look after him other than his wife, who is working. Mr Kandola submitted that it was "perverse" to find that one of his parents would not be able to give the care required. There were no specific grounds relating to any physical or mental disability.
13. Mr. Kandola submitted that it is not clear, apart from the first claimant reminding his father to take his medication, what care the claimants provide for him. The mother does not have a primary carer. The father suffers from backache and panic attacks for which he self medicates. He dresses himself and takes care of his cleanliness. The father does not go for a walk by himself. Sometimes both the parents go out together and he also joins them. His mother looks after herself and dresses herself [6]. He also submitted that there is no mention of his suffering from any severe mental or physical disability. His father can take medication himself but the first claimant stated that he would have to remind him [4].
14. The Judge also noted at [6] that the claimant has not undertaken any research into social services help. Mr. Kandola submitted that this case is distinguishable from children's cases where a greater level of care would be required and where they would inevitably have to leave the UK. It is not clear that the father needs the level of care that he has asserted.
15. The first claimant's mother is a supervisor in a restaurant in a hotel for breakfast, a job she has been doing since she came here. She works 37 hours a week. She gets the train on her own and walks to her place of work from the station. She is out of the house between 6.30am and 5.30pm. Sometimes she works at weekends.
16. The Judge had regard to the second claimant's evidence that her work as a health assistant with the NHS expires on 22 June 2015. She stated that her in laws would not be able to cope emotionally if she and her husband had to leave them. They are the only relatives of her sponsors [7]. They are aged 70 and 69 respectively. Nobody can give them the emotional support except both of them [7].
17. Mr Kandola thus contended that it was irrational to find that the claimant's parents would be forced to leave the UK. In any event, no such finding has been made. Even if the Judge had considered whether they would have to leave, he was bound to have found that they would not have to.

18. On behalf of the claimants, Ms Bexson forcefully submitted that the decision should be upheld. The Judge did have regard to the medical evidence. Accordingly the secretary of state is simply in disagreement with the findings and the decision properly reached. It is clear that both the mother and father had medical issues. In those circumstances the Judge was entitled to find that the claimants were primary carers.
19. The Judge had addressed whether or not the claimant's father would be 'deprived' of remaining in the UK. His finding at [15] that the father would be deprived of effectively exercising his right of residence as there would be nobody to look after him other than his wife who is working, is sustainable. There would accordingly be no-one to look after the father other than his wife.
20. Ms Bexson referred to the medical evidence at p. 57, relating to the father. The doctor's report dated 10 October 2013 is addressed "to whom it may concern". It states that Mr Laca is registered with the Shrewsbury Road Surgery. He suffers from chronic panic disorder, is under the care of a clinical psychologist and is undergoing cognitive behavioural therapy. He also receives medication for that. He gets panic attacks on going out. The children are his main carers, who help him out with "every day chores."
21. There is a further GP report at p. 62 dated 8 July 2014 in which the same information is given. The 'problems' identified are: 28 October 2011, chronic anxiety; 23 November 2011, mixed hyperlipidemia; 27 January 2012, chronic anxiety; and 1 July 2014, fungal infection of skin. Medications including hydrocortisone and emollient creams were prescribed.
22. In the prescription dated 9 June 2014, at p.61, Fluoxetine tablets were prescribed, one to be taken daily as well as Atorvastatin, 10mg tablets, one of which is to be taken each day.
23. Ms Bexson submitted that the first claimant's witness statements were before the Judge. He referred in them to the GP letter dated 8 July 2014 with respect to his father, who gets severe panic attacks. She pointed out, as already noted, that the GP stated that his children are his main carers, who help him out on everyday chores.
24. The first claimant stated at paragraph 16 of his statement that he and his partner look after them "...by doing grocery, all household responsibilities including cooking, washing, cleaning etc. and taking them for medical appointments and small trips and so on". If they are removed from the UK, his parents' well being and care would be compromised. They would have to leave the UK because his father will need a carer who speaks Tagalog¹. It will be difficult for him to afford medication and treatment - para 18.

¹ During the course of the submissions, I was informed by Ms Bexson that the claimant's father receives counselling and during the session with the psychologist has the benefit of an interpreter who speaks Tagalog .

25. She noted that the father adopted the facts set out in his son's witness statement at pages 10 and 11 of the claimants' bundle.
26. Ms Bexson submitted that the emotional support given could not be replaced by social services. There are 'cultural implications' as well.
27. She acknowledged that there have been no social service assessments. The father has suffered from his disability from 2012. She referred to the GP summary for 2011, 2012 and 2014 at page 62. There does not appear to be any up to date report however.
28. She submitted that the Judge took all this into account, including evidence of the medication taken. She noted that the first claimant stated at paragraph 16 of his statement that he and his partner attend to their day to day needs including taking them for medical appointments. The Judge has assessed this evidence properly. It is not a mere question of convenience. The fragile nature of the family and the needs of the claimant's father had been set out. The Judge has set out the medical problems relating to the claimant's mother as well as the letters from the GP at [13]
29. There had been a lengthy hearing and there were detailed statements from the parents including statements found at section J of the secretary of state's bundle.
30. In reply, Mr Kandola submitted that the crucial question which had not been answered or dealt with was whether the parents would be unable to reside here and would be required to leave the UK. The Judge has not engaged with that question. No report had been commissioned from the NHS or Social Services. No evidence was given why the claimant's mother could not take care of the father.
31. He submitted that this is a case of preference and convenience rather than there being no other person or agency to help the father, who has limited needs. The level of help required is not significantly high.

Assessment

32. I accept Ms Bexson's submission that the Judge has considered the available evidence including the medical evidence relating to the first claimant's father. That evidence does not go beyond 2014, however. There was no updating evidence produced regarding his father's condition in April 2015, the date of the hearing.
33. The medical evidence produced asserts that the claimants assist with the daily chores and are the main carers for both parents. However, it is evident that they are not primary carers for the first claimant's mother: she has been working for 37 hours a week and therefore it cannot be claimed that she is in need of care in line with the definition in the European Regulations. The Judge found that any care that she required had been on an emergency basis [14].

34. The Judge nevertheless went on to find that in view of the fact that there does not seem to be the existence of another caregiver, relative or legal guardian, it is not reasonable to expect the father to go into the care system when he has his own son who can look after him; he found that the first claimant acts as a primary carer for his father.
35. It was not however clear what care the father was receiving from his son. The claimant reminded his father to take his medication. He suffers from backaches and panic attacks for which he self medicates. He is required to take two tablets a day. He is however able to dress himself and look after his own hygiene. He sometimes asks his son to help him dress [10].
36. He has suffered from chronic panic disorder and is under the care of psychologists and is having cognitive behavioural therapy. There is no suggestion that the claimant's father is unable to move about. The Judge also found that the first claimant is not in employment and assists his father in making sure that he uses his medication as well as helping him with groceries and cooking.
37. The Judge found that at [15] if the claimants were to be removed the father would be deprived of effectively exercising his right of residence as there would be nobody to look after him other than his wife who is working. His wife would not be able to give the same care given by the first claimant as she works 37 hours a week. That care consists of the chores carried out by the claimants, who were living together with the parents.
38. There was however no finding that the parents would leave the Union if the claimants left. Nor was there a finding that the first claimant's parents would be unable to reside in the UK if the claimants were required to leave. The first claimant himself stated no more than that it would be difficult for his parents if he had to leave.
39. The Judge accordingly did not consider why they would be unable to reside in the UK if the claimants were required to leave. The first claimant's mother stated that if the claimants were to return to the Philippines, she would be unable to work. However, that is a matter of choice of lifestyle. She would prefer to continue working.
40. Nor did the claimants produce any evidence or contend that social services, the local authority or the health services had been contacted in order to ascertain whether a level of care consistent with the father's needs could be provided. As British citizens, the first claimant's parents would be entitled to appropriate care from the local authorities' social services department, or from the NHS to which he would also be entitled. That would include assisting his attendance at ongoing cognitive therapy sessions, if required.
41. For these reasons I find that the decision of the First-tier Tribunal involved the making of a material error on a point of law. I accordingly set it aside and re-make it.

42. I have set out the evidence underlying the claims under the 2006 Regulations.
43. Paragraph 15A(1) provides that if a non-exempt person satisfies the criteria in the relevant paragraphs, he is entitled to a derivative right to reside in the UK. Paragraph 15A(4A)(c) provides that the person satisfies the criteria in this paragraph if the relevant British citizen would be unable to reside in the UK or in another EEA state if the person were required to leave.
44. I find that the claimants have not demonstrated that the parents of the first claimant would be unable to continue to reside in the UK or another EEA state if they were required to leave.
45. There is no evidence or suggestion that they would be forced to leave the Union if the claimants were not granted leave to remain. The requirement under the Regulations is not met by an assumption that they will leave and does not involve a consideration of whether it would be reasonable for the carer to leave the UK: Ayinde and Thinjom (Carers - Reg 15A - Zambrano) [2015] UKUT 00560 (IAC) at [62]. Indeed, the first claimant's mother would prefer to continue her employment. His father would wish to continue receiving medical and psychological help in the UK.
46. The fact that the family may consider it preferable to remain together and continue with their current routine or that they might find it more convenient financially, is not relevant - MA and SM (Zambrano: EU children outside EU) Iran [2013] UKUT 380.
47. The claimant's mother stated that it would be hard for her if her son and daughter in law had to go back to the Philippines as there would be nobody to look after them if her son goes away. However, she has been in the UK for some 40 years. She stated that she did not think that family and friends could help out. However, she acknowledges that she has not contacted social services as it is better for her son to look after her. She can rely on him as she knows him and the tradition and culture [9].
48. The Judge however found at [14] that the claimant's mother is working for about 37 hours a week and that it cannot therefore be claimed that she is in need of care in line with the definition of the 2006 Regulations. The claimants have not challenged that finding.
49. As to the first claimant's father, I do not accept that there is no other appropriate caregiver, available from social services, the local authority or NHS, including from the first claimant's mother, to provide him with the necessary care and assistance.
50. In the circumstances I find that the first claimant's parents have not shown that they would be unable to reside in the UK or in another EEA state were the claimants required to leave.

Notice of Decision

Having found that the decision of the First-tier Tribunal involved the making of an error on a point of law, I substitute a decision dismissing the claimants' appeals.

No anonymity direction is made.

Deputy Upper Tribunal Judge Mailer

Dated: 27 October 2015