



**Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: OA/03438/2014**

THE IMMIGRATION ACTS

**Heard at Field House
On 20 July 2014**

**Decision Promulgated
On 28 July 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE DOYLE

Between

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

**VINUBHAI SHANABHAI PATEL
(Anonymity direction not made)**

Respondent

Representation:

For the Appellant: Mr E Tufan, Senior Home Office Presenting Officer

For the Respondent: Mr A Blake (counsel), Instructed by Gulbenkian Andonian, solicitors.

DECISION AND REASONS

Introduction

1. I have considered whether any parties require the protection of an anonymity direction. No anonymity direction was made previously in respect of this Appellant. Having considered all the circumstances and evidence I do not consider it necessary to make an anonymity direction.

2. The Secretary of State for the Home Department brings this appeal but in order to avoid confusion the parties are referred to as they were in the First-tier Tribunal. This is an appeal by the Secretary of State against a decision of First-

tier Tribunal Judge Zahed, promulgated on 28 January 2015 which allowed the Appellant's appeal.

Background

3. The appellant was born on 5 September 1936. He is an Indian national. On 17 February 2014, the respondent refused the appellant's application for entry clearance as an adult dependent relative under Paragraph EC-DR.1.1 of Appendix FM of the Immigration Rules.

The Judge's Decision

4. The appellant appealed to the First Tier Tribunal. First Tier Tribunal Judge Zahed ("the judge") allowed the appeal against the respondent's decision under the Immigration Rules. The judge found that the appellant's witnesses were credible and found that the appellant requires long term personal care to perform the ordinary activities of daily living and so found that the requirements of Immigration Rules EC-DR.2.4 were met.

5. Grounds of appeal were lodged by the respondent and on 10 March 2015, designated First Tier Tribunal Judge Murray gave permission to appeal, finding that there was inadequate evidence to allow the judge to reach the conclusions that he did and that "*...there is no evidence that it is not possible to get the required level of care in India...*"

The Hearing

6. Mr Tufan for the respondent submitted that the issue in this case was whether Paragraph EC-DR of the Immigration Rules was satisfied. He argued that EC-DR.2.4 and 2.5 have conjunctive requirements, both of which must be satisfied by the appellant. He said that the respondent's position is simple; the question was whether or not the judge was entitled to reach the conclusions reached in the determination promulgated on 28 January 2015 on the evidence provided. Mr Tufan said that a high test is set by EC-DR and that the conclusion reached by the judge "*...is almost perverse*".

7. Mr Blake for the appellant adopted the terms of the 9 page skeleton argument and referred to the evidence set out in the appellant's bundle, which was available to the judge at first instance. After discussing the evidence, he relied on the cases of **Mukarkar v SSHD [2006] EWCA Civ 1045**, **Edwards v Beirstow [1956] AC 14**, **Osman v ECO (Appeal No. OA/18244/2012, promulgated on 15 November 2013)** and **Nixon (Permission to Appeal: Grounds) [2014] UKUT 00368 (IAC)**. He argued that the challenge is one of rationality and that findings of credibility were properly open to the judge to make and that the evidence before the judge supported the conclusions made.

Analysis

8. The relevant provisions of Appendix FM are E-ECDR2.4 and E-ECDR2.5. Under E-ECDR2.4 the applicant must as a result of age, illness or disability require long term personal care to perform everyday tasks.

9. Under 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 could not reasonably provide it; or

(b) it is not affordable.

10. The grounds of appeal argue that there was insufficient evidence before the First Tier Tribunal for the judge to reach a conclusion that residential care facilities were not available to the appellant in India nor that there was sufficient evidence to allow the judge to reach the conclusion that as a result of age or disability, the appellant requires long term personal care to perform everyday tasks.

11. The evidence which was before the judge is contained in the appellant's bundle and the Home Office PF1 bundle. The appellant's bundle contains witness statements from the appellant's wife and daughter, together with witness statements from the appellant's granddaughters. The judge records at paragraph 4 of his determination that he heard evidence from the appellant's wife, two daughters and one granddaughter. At paragraph 9, he finds that each of those witnesses were credible, honest and reliable.

12. Between documents 78 and 142 of the appellant's bundle, medical documentation is produced. Amongst those documents, there are letters from two hospitals confirming diagnosis of diabetes and hypertension. There is also sufficient documentary evidence to establish that the appellant suffers from depression and that his condition is treated by oral medication. There is unchallenged documentary evidence that the appellant lives alone. At [9], [10], [11] and [12] of the decision, the judge summarises that evidence and placing reliance on that evidence, finds that the appellant suffers from depression, hypertension and anxiety; that the appellant is struggling to cope with the ordinary activities of daily living; that the appellant is not able to wash, dress or cook himself; that he is no longer able to pursue an independent life and the level of care that he requires is not available to him.

13. At [13], the judge makes a specific finding that the appellant's disabling conditions leave the appellant in need (because of his age, illness and disability) of long term personal care to perform everyday tasks. At [14], the judge finds that the appellant is unable, even with the practical and financial help of the sponsor, to obtain the required level of care in the country in which he lives.

14. In reaching those findings at [13] and [14], the judge demonstrably applies the correct legal test.

15. The real challenge in this case is to the quality of evidence which drew the judge to his conclusions. At [7] and [8], the judge clearly places reliance on the documentary evidence concerning the appellant's medical condition and the treatments that he receives. Between [9] and [11], the judge clearly placed reliance on the oral evidence and found the witnesses to be credible and reliable. The questions of the weight to be afforded of such evidence are classically questions for the judge at first instance.

16. Disagreement with a Judge's factual conclusions, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Rationality is a very high threshold and a conclusion is not irrational just because some alternative explanation has been rejected or can be said to be possible.

17. At [13] and [14] of the decision, the judge applies the correct legal test.

18. I therefore find that as the weight to be afforded is a question for the judge at first instance and as the correct legal test has been applied, there is no error of law. The respondent might view the determination promulgated on 28 January 2015 as a generous decision, but such an expression of dissatisfaction of the decision does not amount to a material error of law.

CONCLUSION

19. I therefore find that no errors of law have been established and that the Judge's determination should stand.

DECISION

20. The appeal is dismissed.

Signed

Date 25 July 2015

Deputy Upper Tribunal Judge Doyle