



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: HU/15064/2016

THE IMMIGRATION ACTS

**Heard at Field House
On 22 December 2017**

**Decision & Reasons Promulgated
On 30 January 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE MCGEACHY

Between

ENTRY CLEARANCE OFFICER

Appellant

and

**MRS URMILA VASANT KADAM
(ANONYMITY DIRECTION NOT MADE)**

Respondent

Representation:

For the Appellant: Ms K Everett, Senior Home Office Presenting Officer

For the Respondent: Mr P Turner, of Counsel instructed by Law Lane Solicitors

DECISION AND REASONS

1. The Secretary of State appeals with permission against a decision of Judge of the First-tier Tribunal Fox who in a determination promulgated on 17 August 2017 allowed the appellant's appeal against a decision of the Entry Clearance Officer, made on 24 May 2016, to refuse her a visa to enable her to enter Britain as the dependent relative of her son.

2. Although the Entry Clearance Officer is the appellant before me I will for ease of reference refer to him as the respondent as he was the respondent in the First-tier. Similarly, I will refer to Mrs Urmila Vasant Kadam as the appellant as she was the appellant before the First-tier Tribunal.
3. The appellant is a citizen of India born on 23 July 1942. In the refusal the Entry Clearance Officer wrote that it was not accepted that she could not receive the required level of care in her own country nor was it accepted that there was no one in India who could reasonably provide it or that it was not affordable. The Entry Clearance Officer pointed out that the appellant had recently applied for a five year visit visa to see her family in the United Kingdom and had made no mention of any medical conditions in that application and, in fact, had stated that she would not have medical treatment in Britain. The ECO said that if she now required full-time care due to medical problems it was unclear "how you would have spent 5 years in the United Kingdom without any need for treatment". It was noted that in the last two years she had made numerous visits globally which indicated that she was both in good physical condition and it was stated it was unlikely that someone in need of care and who could not complete everyday tasks would be a frequent international traveller. It was stated that she has not indicated that she met the threshold of dependency outlined in Appendix FM. The Entry Clearance Officer went on to state:-

"Based on the information you have provided I am not satisfied you need care. I am not satisfied that you require, due to either age, illness or disability, long-term personal care to perform everyday tasks. I therefore refuse your application under paragraph EC-DR.1.1. (d) of Appendix FM of the Immigration Rules. (E-ECDR. 2.4) and (E-ECDR.2.5)"

The application was also refused on human rights grounds.

4. The grounds of appeal argued that the appellant met the requirements of the Rules and also that the decision was not in accordance with the sponsor's Article 8 rights.
5. There was no appearance on behalf of the Entry Clearance Officer before the First-tier Judge. In a brief determination the judge noted the respondent's decision, set out the burden and standard of proof, listed case law, and noted that a bundle of documents had been submitted. In paragraphs 16 through 24 he set out the submissions made to him by Mr Turner.
6. In less than a page he set out his findings which were:-

"25. The appellant satisfied the burden upon her in accordance with the Immigration Rules. The available evidence demonstrates that the appellant is unable to obtain the required level of care in India as there is no person in that country who can reasonably provide it.

26. The distinguishing feature of the evidence is the exceptional circumstances arising from the sponsor's personal history. When considered with the appellant's medical evidence it is reasonable to conclude that the sponsor stands apart from all other possible carers.
 27. It is evident that the sponsor has overcome significant personal challenges in order to pursue his life opportunities. It is reasonable to conclude that the appellant has been fundamental in the sponsor's success. His dependency upon her causes the appellant's relationship with the sponsor to go beyond normal emotional ties between adult family members.
 28. The sponsor's separation from the appellant can be likened to an adult child's departure for further education delivered outside the home region. It is acknowledged that this does not automatically sever family ties and the same principle applies to the sponsor due to his heightened dependency upon the appellant.
 29. For these reasons I find that the family life between the appellant and sponsor was never severed. The sponsor's dependency has evolved into a mutual dependency as the appellant gets older. It is reasonable to expect that the exceptional circumstances that caused the bond to arise will result in the sponsor's acute desire to demonstrate his appreciation as the appellant enters a vulnerable period of her own life. The detrimental emotional and psychological impact, upon the appellant and sponsor, of an inability to do so is apparent from the available evidence.
 30. As the appeal is allowed in accordance with the Immigration Rules it is unnecessary to consider Article 8 ECHR in any meaningful detail. It follows that inference with Article 8 ECHR is disproportionate to any legitimate aim pursued. Exceptional circumstances exist for the same reasons as stated above; Nagre applied."
7. The judge therefore allowed the appeal apparently on immigration grounds as well as on human rights grounds.
 8. The Entry Clearance Officer appealed stating that the judge had firstly failed to give adequate reasons to make material findings. The grounds read:-

"Given the appeal was allowed under the rules the FTTJ makes no proper findings about what the appellant's current medical and personal needs are and what everyday tasks she needs personal long term care to perform. Indeed the FTJ notes counsel's concession at [20] that the medical evidence is lacking.

Given this was an appeal allowed under the rules the FTJ makes no proper findings about how the provisions of the adult dependent relative rules are satisfied.

The actual findings of the FTJ upon the evidence appear in 5 brief paragraphs [25-29]. The FTJ appears to reason that the sponsor's success in life has been attributable to the appellant - [27]. It is respectfully submitted the FTJ has failed to give adequate reasons as

to how the sponsor is therefore dependent on the appellant for his success. Further the FTJ's rationale that the sponsor was like a child who has left home to study further is misconceived. The sponsor left India and the family home to pursue his own career abroad [22]. The present facts in no way mirror that of a child who has temporarily left home to study and this is deemed not to have formed his own independent life.

The FTJ's findings on the existence of family life and mutual dependency are inadequately explained or reasoned.

Further, insofar as it could be suggested the appeal was allowed under article 8 (which the ECO contends it manifestly wasn't) no findings were made about any public interest features under 117B of the 2002 Act."

9. At the hearing of the appeal before me Ms Everett relied on the grounds of appeal emphasising that the judge had not given sufficient or indeed any reasons for his decision. It was noted that the judge had relied on the sponsor's medical history but that in itself did not demonstrate family life. The only evidence was, she argued, that there was a letter from the appellant's physician stating that her health is deteriorating because she missed her son. It was not clear, she argued, how the appellant might meet the requirements of the Rules. Moreover no reasons had been given as to why the application could succeed under Article 8.
10. In reply Mr Turner argued that the appellant's evidence and the bundle of documents submitted clearly showed that the appellant met all the requirements for her needs. He referred to statements in the bundle from the sponsor, the sponsor's wife and the appellant and the assertions made that she is unable to meet or obtain the necessary level of care. He referred to the sponsor's own health issues and argued that it was only the sponsor who could care for his mother. It was not, he argued, an issue of money but the fact of the level of care which she require. He asserted that the judge had made findings of fact which were fully open to him and that there was no real challenge to those. He argued that was often claimed that a judge did not need to make findings on all issues in an appeal provided it was evident that he had considered all aspects of the law. He argued that that was what had happened here. Moreover, he argued that there were exceptional circumstances in this case which, when the medical evidence was considered, meant that this case stood apart from all other possible cases or other possible carers. He asked me to accept the sponsor's desire to look after his mother at a vulnerable period in her life and stated that the grounds were merely a disagreement with the facts which were fully open to the judge.

Discussion.

11. The Immigration Rules set out the clear requirements for entry clearance to be issued to a dependent parent. These are set in Appendix FM at E-EDCR.2.1 and in particular E-EDCR.2.2.5 which states:-

“The applicant or, if the applicant and their partners 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) is not affordable.”

12. The further relevant issue relate to the financial requirements which include evidence that the applicant can be adequately maintained, accommodated and cared for in the United Kingdom by the sponsor without recourse to public funds and, if the applicant’s sponsor is a British citizen or settled in the United Kingdom, the applicant must provide an undertaking signed by the sponsor confirming the applicant will have no recourse to public funds and that the sponsor will be responsible for his or her maintenance, accommodation and care for a period of five years from the date the applicant enters the United Kingdom if they are granted indefinite leave to enter.

13. It is clear from the determination that the judge nowhere grapples with the requirements of the Rules and yet he appears to have allowed the appeal under the Rules. The very least that could have been expected would be for the judge to set out the Rules and to say how each requirement of the Rules is met and his reasons for finding that that Rule is met. There is no evidence whatsoever that the judge has carried out that exercise. On that basis his decision to allow this appeal is in material error of law.

14. With regard to the decision to allow the appeal on human rights grounds that appears to be based on the fact that the judge has found that the requirements of the Rules for an adult dependant are met. That, however, has not been shown by the judge for the reasons which I have set out above. Moreover the first step in considering an Article 8 application is whether or not there is family life between the appellant and the sponsor. In this case the judge appears to state the relationship between the appellant and the sponsor is like that between a parent and a child who goes to study for a period abroad before returning home. That is simply not the case here. The reality is that the sponsor, who was born in January 1968, left home in 2005 to work abroad. He entered Britain in 2006. This application was made in 2015. That does not show that family was continuing between the appellant and the sponsor – the sponsor left India at the age of 39. I therefore do not see how the judge could have considered that family life exists in any meaningful sense.

15. I accept that the sponsor has had a difficult life and the way in which he has tackled the very serious illnesses – both polio and a stroke - and has made a successful career is admirable. I can understand that he is particularly attached to his mother, but I do not consider that those facts alone, while they introduce very strong compassionate factors in this case, are sufficient to lead to a decision that the appeal should be allowed on human rights grounds.
16. For the above reasons I find that there are material errors of law in the determination of the Judge of the First-tier Tribunal and I set aside his decision.
17. The decision is so lacking in reasoning for the reasons which I have given that I hesitate to conclude that there was no evidence which could have led this case to be successful – what there appears to be is complete lack of enquiry into the evidence and findings made. For that reason I consider that it is appropriate that this appeal be remitted for a further hearing in the First-tier Tribunal where a further judge can make findings on all relevant issues, both with regards to the ability of the appellant to meet the requirements of the Rules and with regard to her rights under Article 8 of the ECHR. I consider it important that there are findings regarding each and every element of the requirements in the Rules, which Mr Turner has accepted are stringent, and in particular I consider that enquiry needs to be made and findings then made regarding the appellant's other children in India.

Notice of Decision

The appeal is remitted to the First-tier Tribunal for a hearing afresh on all issues.

Signed:



Date: 25 January 2018

Deputy Upper Tribunal Judge McGeachy