



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Numbers: OA/22201/2013
OA/22218/2013

THE IMMIGRATION ACTS

Heard at Taylor House
On 26 February 2015

Decision & Reasons Promulgated
On 20th March 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE SHAERF

Between

ENTRY CLEARANCE OFFICER - NEW DELHI

Appellant

and

BIR DHARAM JUNG AHUJA
SHANTA AHUJA
(ANONYMITY DIRECTION NOT MADE)

Respondents

Representation:

For the Appellant: Mr L Tarlow of the Specialist Appeals Team
For the Respondents: Dr Vipin Ahuja - the Sponsor

DECISION AND REASONS

The Respondents

1. The Respondents to whom I shall refer as the Applicants are citizens of India born respectively in 1930 and 1931. They are husband and wife and are the parents of the Sponsor who is their son and a British citizen. He works as a fund manager The first

Applicant suffers from Parkinson's disease and the second Applicant is his wife who is no longer able to cope with his care as his condition deteriorates.

2. The Sponsor is married and his wife works in the banking sector. They have two children aged at the date of the decision about 18 and about 14.
3. On 4 October 2013 the Applicants sought entry clearance as adult dependent relatives of their son, the Sponsor.

The Decision and Appeal

4. On 5 December 2013 the Appellant (the ECO) under reference numbers 3490127 and 3490128 refused the application of each of the Applicants. He noted the husband had been suffering from Parkinson's disease for the previous five years and had last been discharged from hospital in July 2013. He noted the husband was unable to care for himself on a daily basis and that he had received regular financial support from his son the Sponsor over the previous three years. He also noted that his wife, the second Applicant was not physically able to care for her husband. He referred to the fact the Applicants had a daughter who was settled in the United States with a family; that they had travelled to the United Kingdom in the previous four years and had also travelled once in the previous four years to the United States. He referred to hospital facilities in New Delhi as comparable to those in the United Kingdom. He also referred to the Applicants' culture which placed the responsibility for their care on their son.
5. The husband's application was refused under para.EC-DR.1.1(d) and E-ECDR.2.5 of Appendix FM to the Immigration Rules.
6. The ECO noted the wife was in remission from cancer of the colon and was unable to care for herself. He noted the husband's application had been refused and refused her application under paras.EC-DR.1.1(d) and E-ECDR.2.4 of Appendix FM to the Immigration Rules.
7. Para.EC-DR.1.1 states that for entry clearance as an adult dependent relative the Applicant must, in addition to other matters and none of which were raised by the ECO, meet all the requirements of Section E-ECDR. Para.E-ECDR.2.4 states that:-

The applicant or, if the applicant and their partner are the sponsor's parents ... the applicant's partner, must as a result of age, illness or disability require long-term personal care to perform everyday tasks.

and para.E-ECDR.2.5 states:-

The applicant or, if the applicant and their partner are the sponsor's parents ... 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) it is not affordable.
8. On 28 December 2013 each of the Applicants lodged notice of appeal under Section 82 of the Nationality, Immigration and Asylum Act 2002 as amended (the 2002 Act). The grounds refer to additional difficulties in providing care for the husband on account of his hallucinations, depression and feelings of insecurity brought about by the effects of both the husband's condition and his medication. Mention was made to the fact the Sponsor had visited India three times in the previous six months at short notice.
9. The Sponsor's two children are well-established. At around the time the decisions under appeal were made the Sponsor's eldest child had started university studies and his younger child had started grade 9. In addition both he and his wife worked full-time in the United Kingdom. The wife's grounds of appeal were linked to those of her husband.

The First-tier Tribunal's Determination

10. By a determination promulgated on 28 November 2014 Judge of the First-tier Tribunal L K Gibbs allowed the appeals under the Immigration Rules, noting the Respondent had not challenged the Sponsor's documentary and oral evidence.
11. The ECO sought permission to appeal on the sole ground in the case of each of the Applicants that the Judge had failed to consider the appeal of the wife, the second Applicant.
12. On 20 January 2015 Judge of the First-tier Tribunal Pirotta granted permission to appeal on the basis that the Judge had "carried out a superficial analysis of the evidence concerning the first Appellant's case and ... failed to make any mention of the grounds or evidence in the appeal concerning the second Appellant" and that the permission application "properly raises concerns that the IJ had not properly taken the law into account and was in error in not providing a reasoned decision on the case of the second Appellant". Further the Judge's decision "discloses several arguable material errors of law, misconstruction of the law and scant reference to the relevant evidence".

The Error of Law Hearing in the Upper Tribunal

13. The Sponsor was present to represent the Applicants. Mr Tarlow for the Respondent properly accepted that even if the grounds for permission to appeal relating to the second Applicant were correct it would make no difference to the outcome in relation to the first Applicant and applied for permission to amend the grounds for appeal in respect of the first Applicant. I referred to the overriding objective in Procedure Rule 2 and noted that effectively at such a late stage the application to

amend or plead new grounds amounted to an ambush. Mr Tarlow then sought to put the application on more limited grounds, namely a variation of the grounds for appeal to reflect the findings of Judge Pirota in paragraphs 3 and 4 of her grant of permission to appeal to the substance of which reference has already been made. In the circumstances I did not see the Sponsor could reasonably claim he or the Applicants had been caught unawares.

14. Mr Tarlow referred to paragraph 13 of the Judge's decision which set out para.E-ECDR.2.5 and submitted that the following paragraph 14 failed to give sufficient reasons to show why the Judge had found the Applicants met the relevant requirements. The failure to provide adequate reasoning amounted to a material error of law. I referred to paragraphs 10-12 of the decision in which the Judge had set out in some detail the evidence of the Sponsor about the situation of his parents in India and of his family in the United Kingdom. The Judge had made positive credibility findings at paragraphs 10 and 14. Mr Tarlow then sought simply to rely on the grounds for appeal amended as he had requested for the ECO.
15. At various points during Mr Tarlow's submissions I had explained the position to the Sponsor who had nothing to add.
16. I considered the submissions for the ECO and found the original grounds for appeal did disclose an arguable error in law but they did not disclose a material error of law such that the Judge's decision should be set aside for the reason already given and accepted by the Respondent. I considered the ECO's new grounds, effectively as set out paras.3-4 of the grant of permission to appeal disclosed an arguable error of law and concluded that paras.10-12 of the Judge's decision gave adequate reasons to justify the conclusions she reached by at paras.14-15 of her determination.
17. The Judge carefully considered the documentary evidence and the oral testimony of the Sponsor which she had set out in paras.9-12. A careful reading of these paragraphs showed that the Sponsor's parents had unfortunately reached a stage where they were in need of a considerable degree of care and help throughout the day and that even if the Sponsor and his wife were working full-time their involvement on a day-to-day basis and their immediate availability since they lived and worked in London could not be replicated relying on local resources in India. That the first Appellant succeeded meant that the second Appellant, his wife, also had to succeed under the Immigration Rules. Consequently, I concluded that the new grounds did not disclose a material error of law such that the Judge's decision should be set aside.

Anonymity

18. There was no request for an anonymity direction and having considered the matter I find that none is warranted.

Notice of Decision

The decision of the First-tier Tribunal did not contain a material error of law such that it should be set aside and therefore it shall stand. The consequence is that:

The ECO's appeal in respect of each of the Applicants is dismissed.

The appeal of each of the Applicants is allowed.

Signed/Official Crest

Date 20. iii. 2015

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal

TO THE ECO: FEE AWARD

As I have found the decision of the First-tier Tribunal should not be set aside the fee award of £70 to each of the Applicants already made stands.

Signed/Official Crest

Date 20. iii. 2015

Designated Judge Shaerf
A Deputy Judge of the Upper Tribunal