



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

Appeal Number: HU/15837/2016

**THE IMMIGRATION ACTS**

**Heard at Field House**

**Decision & Reasons  
Promulgated**

**On 19<sup>th</sup> January 2018**

**On 27<sup>th</sup> February 2018**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE D N HARRIS**

**Between**

**MS MADINABIBI KASAMBHAI DADABHAI  
(ANONYMITY DIRECTION NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Ms P Heidar (Counsel)

For the Respondent: Ms A Everett, a Home Office Presenting Officer

**DECISION AND REASONS**

1. The Appellant is a citizen of India born on 26<sup>th</sup> March 1935. The Appellant had applied for entry clearance as an adult dependant relative under Appendix FM of the Immigration Rules. Her application was considered under paragraph EC-DR.1.1 of Appendix FM of the United Kingdom Immigration Rules. The Appellant's application was refused by the Entry Clearance Officer on 27<sup>th</sup> May 2016. It is recorded on that refusal that a previous application made on the same basis had been refused on 11<sup>th</sup> October 2012.

2. The Appellant appealed and the appeal came before Judge of the First-tier Tribunal Swinnerton sitting at Hatton Cross on 28<sup>th</sup> March 2017. In a decision and reasons promulgated on 12<sup>th</sup> April 2017 the Appellant's appeal was dismissed.
3. Grounds of Appeal were lodged to the Upper Tribunal on 9<sup>th</sup> May 2017. The basis of the challenge was that the Immigration Judge having been required to take into account all the evidence before him, make insufficient findings on the facts and evidence and make clear findings on all the requirements of the Immigration Rules and had failed to make correct findings and apply the appropriate law.
4. On 20<sup>th</sup> November 2017 Judge of the First-tier Tribunal Osborne granted permission to appeal. Judge Osborne considered that in an otherwise careful decision and reasons it was nonetheless at least arguable that at paragraph 26 the judge himself had raised the adequacy of the Sponsor's current accommodation for the needs of the whole family including the Appellant whereas that was an issue that was not raised by the Respondent in the refusal. He considered that the judge arguably erred in taking that non-issue into account and had criticised the Appellant for not providing adequacy of the evidence of accommodation when that was not an issue.
5. On 20<sup>th</sup> December 2017 the Secretary of State responded to the Grounds of Appeal under Rule 24. It is on that basis that the appeal comes before me to determine whether or not there is a material error of law in the decision of the First-tier Tribunal Judge. The Appellant appears by Ms Heidar, a legal representative with A A Immigration Lawyers. The Respondent appears by her Home Office Presenting Officer Ms Everett.

### **Submissions/Discussions**

6. Ms Heidar advises me that there are two issues in this matter. The first one she turns to is the issue of accommodation and submits that the Immigration Judge incorrectly assessed the accommodation of the Sponsor and that the judge addresses this at paragraph 26 of his decision. She points out that the sufficiency of accommodation was not raised by the Respondent in the refusal letter and that this was addressed in a letter from the landlords dating back to 3<sup>rd</sup> December 2015. She points out that this letter was not before the judge on the basis that it was not needed and that his decision therefore was wrong.
7. Secondly she states there is a factual error that the Appellant was in receipt of pension and rental income and that this was based on the 2013 application. However as Ms Everett points out paragraph 13 does show quite clearly that whilst the Appellant previously rented property which provided rental income that property is not rented at present and does not provide any rental income. Ms Everett consequently submits that the judge has made no error of fact at all and that this matter is fully explained within the determination.

8. Ms Heidar then raises another issue relating to the care available in the UK and submits that the conclusions reached by the judge at paragraph 27 relating to recourse to public funds by the Appellant is not made out on a correct assessment. Firstly she points out the test relates to one of additional funds and that the Immigration Rules was required to assess the long term personal care available in India under the Immigration Rules. She submits that documentary evidence in support of the fact that care was not available was before the First-tier Tribunal Judge and that there was oral submission made and a skeleton argument provided. She submits the judge was wrong to conclude that there would have been a need for additional recourse to public funds bearing in mind the Sponsor is on benefits.
9. The final issue refers to the issue of sufficiency of care taking me to paragraphs 28 and 31 of the judge's decision. She submits that the judge has only made findings at paragraph 29 with regard to the capacity of the Appellant's Sponsor to look after her which is speculative. She asked me to find there are material errors of law in the decision of the First-tier Tribunal Judge and to remit the matter back to the First-tier for rehearing.
10. In response Ms Everett points out that so far as accommodation is concerned some of the evidence she accepts was not before the judge and therefore there is an error of fact. However she submits it is not material and that the judge has looked at all issues in the round. She submits that the assessment by the judge at paragraphs 26 to 29 of the decision relating to the financial support available are considerably more nuanced than is suggested by Ms Heidar. She reminds me that the Sponsor has health needs and cannot work nor does his wife. She submits that the judge looked at the evidence in the round and concluded that there would be recourse to other public funds e.g. the provision of a wheelchair etc. and that the judge had made proper findings in concluding that it would not be reasonable to conclude that the Sponsor had sufficient funds to maintain the Appellant.
11. Finally Ms Everett turns to the issue of care in particular the care received by the Appellant in India. She submits the judge has made clear findings. Further he has accepted that the property which has been the subject of some reference was not rented out and the judge has not misunderstood the evidence and has not come to perverse conclusions. She asked me to dismiss the appeal.

## **The Law**

12. Areas of legislative interpretation, failure to follow binding authority or to distinguish it with adequate reasons, ignoring material considerations by taking into account immaterial considerations, reaching irrational conclusions on fact or evaluation or to give legally inadequate reasons for the decision and procedural unfairness, constitute errors of law.

13. It is not an arguable error of law for an Immigration Judge to give too little weight or too much weight to a factor, unless irrationality is alleged. Nor is it an error of law for an Immigration Judge to fail to deal with every factual issue of argument. Disagreement with an Immigration Judge's factual conclusion, his appraisal of the evidence or assessment of credibility, or his evaluation of risk does not give rise to an error of law. Unless an Immigration Judge's assessment of proportionality is arguable as being completely wrong, there is no error of law, nor is it an error of law for an Immigration Judge not to have regard to evidence of events arising after his decision or for him to have taken no account of evidence which was not before him. 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. Nor is it necessary to consider every possible alternative inference consistent with truthfulness because an Immigration Judge concludes that the story is untrue. If a point of evidence of significance has been ignored or misunderstood, that is a failure to take into account a material consideration.

### **Findings on Error of Law**

14. I am satisfied that this decision discloses no material errors of law. It is true to say that at paragraph 26 the judge has erroneously concluded the adequacy of the current accommodation and that this was not an issue before the Tribunal. That is an error. However I conclude that it is not material when looked against all other findings made by the judge. The judge is required to look at all issues in the round and he has given cogent reasons at paragraph 29 to why it is not considered the Sponsor can adequately care for the Appellant without recourse to public funds or as set out at paragraph 27 maintain her. The judge heard the evidence.
15. It is relevant to point out that the judge has specifically noted that the Appellant is no longer renting out her property and therefore it is erroneous to suggest that this was an income that could be taken into account. Overall the judge has looked at this matter in the round and has also made findings on each individual section. The fact that he has erred in his conclusions regarding accommodation does not blight the remainder of the decision. The decision is well constructed and cogent reasons are provided. In such circumstances the arguments on other issues save for accommodation amount to little more than disagreement. As a result I find that there is no material error of law in the decision of the First-tier Tribunal Judge and the Appellant's appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

### **Notice of Decision**

The decision of the First-tier Tribunal Judge discloses no material error of law. The Appellant's appeal is dismissed and the decision of the First-tier Tribunal Judge is maintained.

No anonymity direction is made.

Signed

Date 26 February 2018

Deputy Upper Tribunal Judge D N Harris

**TO THE RESPONDENT  
FEE AWARD**

No application is made for a fee award and none is made.

Signed

Date 26 February 2018

Deputy Upper Tribunal Judge D N Harris