



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM**  
**CHAMBER**

Case No: UI-2021-000523

First-tier Tribunal No:  
EA/06724/2019

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
On 5 September 2023

**Before**  
**UPPER TRIBUNAL JUDGE NORTON-TAYLOR**

**Between**

**KARAMJIT SINGH**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the appellant: Mr R Ahmed , Counsel, instructed by ATM Law Solicitors  
For the respondent: Ms A Ahmed, Senior Presenting Officer

**Heard at Field House on 21 August 2023**

**DECISION AND REASONS**

**Introduction**

1. This is the re-making decision in the appellant's appeal against the respondent's refusal to issue him with a derivative residence card as the primary carer of a British citizen (his wife, "the sponsor"), pursuant to regulation 16(5) of the Immigration (European Economic Area) Regulations 2016 ("the Regulations").

2. This appeal has an unfortunately long procedural history. The respondent's refusal decision was made on 29 November 2019. The appeal against that to the First-tier Tribunal was not determined until 30 June 2021. The Upper Tribunal set aside the First-tier Tribunal's decision on 16 September 2022, but, for various reasons, the re-making was then delayed until now.
3. In summary, the appellant, a citizen of India, has claimed to be the primary carer of the sponsor and that his removal from the United Kingdom would result in her being compelled to leave this country and the territory of the EU.
4. The First-tier Tribunal found that the appellant was indeed the primary carer of the sponsor. It went on to allow the appeal on the basis that the relevant legal test had been met. That decision was set aside by Upper Tribunal Judge Allen. He concluded that the First-tier Tribunal had failed to take account of guidance set out in the authorities and had failed to address certain issues such as the possibility of alternative care provision: [34]-[35]. Whilst Judge Allen did not expressly preserve findings of fact made by the First-tier Tribunal, during the course of subsequent case management, I concluded that this was implicit in his decision and, having regard to all the circumstances pertaining to the progression of this appeal, the primary findings of fact set out at [33]-[38] of the First-tier Tribunal's decision were to be preserved: see the Directions Notice issued on 26 June 2023, at [4].

### **The preserved factual matrix**

5. In light of [20] and [32] of the error of law decision, my Directions Notice, and a discussion at the outset of the resumed hearing, the following matters relating to the relevant factual matrix can be stated:
  - (a) The appellant is the primary carer of the sponsor;
  - (b) Their relationship was and remains genuine and subsisting;

(c) The appellant does in fact provide assistance to the sponsor with her daily living needs;

(d) The sponsor's care needs are "not minimal";

(e) The sponsor does not have any other family members in the United Kingdom who would be able to provide relevant alternative care;

(f) There is a risk that the sponsor's physical and mental health could deteriorate in the absence of the appellant.

6. Two points need to be made about (e) and (f). In respect of (e), the preserved finding of fact relates only to other family members of the sponsor. It does not have any bearing on the potential provision of assistance from friends/members of the community. In respect of (f), I acknowledge that at the resumed hearing Ms Ahmed sought to argue that this particular finding should not be preserved, although no issue had been taken by the respondent in respect of this particular point prior to the hearing. In any event, and as I made clear at the hearing, the finding in question is limited in scope. That finding was made in the absence of any consideration of alternative care from, for example, the local authority/social services or private sector providers. Therefore, any deterioration, as found by the First-tier Tribunal, has to be placed in that context. The finding is in no way determinative of this appeal.

### **The applicable legal framework**

7. The parties are agreed that the correct approach can be found in the judgments of Patel v SSHD [2019] UKSC 59; [2020] 1 WLR 228 and SSHD v RM (Pakistan) [2021] EWCA Civ 1754.

8. From these cases, I derive the following propositions, which I apply in the present case:

(a) The test under regulation 16(5) is one of compulsion: will the dependent British citizen be compelled to leave the United

Kingdom (and the territory of the EU) if the third country national were to leave indefinitely;

(b) The test is to be approached on a practical and objective basis and it is “very demanding”;

(c) In cases concerning dependent adults, it is only in exceptional cases that the high threshold will be met;

(d) The preference of the individuals concerned is not sufficient;

(e) The intentions of the British citizen are not irrelevant, nor are they determinative;

(f) The availability, appropriateness, and adequacy of state-funded medical and/or social care is a relevant consideration. Such an alternative “may in many cases, make it hard for those who provide care to bring themselves within the Regulations”;

(g) Alternative care is not, however, a trump card.

9. For the avoidance of any doubt, no Article 8 issue arises in this appeal.

### **The evidence**

10. In addition to the bundles produced by the parties for the First-tier Tribunal hearing, I have a supplementary bundle from the appellant, indexed and paginated A1-82. That supplementary bundle was admitted in evidence without objection by the respondent. It contains, amongst other items, updated witness statements from the appellant and the sponsor, a second addendum report from independent social worker Ms Jane Bartlett, and a letter and patient records printouts from the sponsor’s GP.

11. The appellant and the sponsor attended the resumed hearing and both gave oral evidence with the assistance of a Punjabi interpreter. They adopted their witness statements and answered questions from Mr Ahmed and Ms Ahmed, as well as a couple from myself by way of clarification. Their oral evidence is a matter of record and I do not

propose to set it out here. I have considered this evidence as part of my overall assessment.

12. I confirm that I treated the sponsor as a vulnerable witness in light of the medical evidence. In the event, there was no suggestion from Mr Ahmed that the sponsor had been in any way materially prejudiced in her ability to give brief oral evidence. For my part, I could see no such prejudice.

### **The parties' submissions**

13. As with the oral evidence, the submissions are a matter of record and need not be set out in any detail here.
14. In summary, Ms Ahmed submitted the sponsor's dependency on the appellant had been exaggerated. The sponsor would prefer to be cared for by the appellant, but that did not satisfy the very high threshold. There was a possibility of assistance from the community and/or other sources if the appellant left the United Kingdom. It was significant that there was no evidence in respect of the local authority. The medical evidence was lacking in that it did not specifically and independently address the sponsor's needs. The sponsor could join the appellant in India, as a matter of choice, but not out of compulsion.
15. Mr Ahmed urged me to find the evidence credible. He acknowledged the absence of evidence from, for example, the local authority and/or a psychiatrist/psychologist. However, he submitted that this was not fatal to the appellant's case. The care currently provided could not be replaced by any other source. Weight should be attached to Ms Bartlett's evidence. Whilst other members of the community had assisted the sponsor when the appellant was not present, this had always been on a temporary basis. The appellant's case was "very exceptional" and the appeal should be allowed.
16. At the conclusion of the resumed hearing I reserved my decision.

### **Assessment of the evidence**

17. In making the relevant findings of fact, I have considered the evidence as a whole and in the context of the preserved findings from the First-tier Tribunal's decision, as set out earlier.
18. In general terms, I find the evidence from the appellant and the sponsor to be honest, as did the First-tier Tribunal. There has in my view been an element of exaggeration in respect of the sponsor's dependency on the appellant, but it is not particularly significant. I will return to this shortly. The much more significant (but not decisive) obstacle in the appellant's path is the absence of important evidence relating to any professional assessment of the sponsor's actual daily personal care needs, her mental health, and the possibility of alternative care from the local authority/social services and/or private sector care providers. Again, I will return to this, below.
19. I re-state the preserved finding that the appellant and sponsor are in a genuine and subsisting relationship. They are clearly devoted to one another. They have now been married for some 7 years and it is perfectly understandable that they wish to remain together and are distressed by the possibility of separation.
20. The issue as to the several visits made by the sponsor to India without the appellant is of some significance in this case. I find that these did in fact occur, the last taking place in early 2023. I accept that the appellant made arrangements to ensure that the sponsor was accompanied on the flight by a friend/member of the local community who also happened to be travelling to India. I accept that the sponsor has a daughter in India who then took up a caring role during the visits. That all makes sense. I acknowledge the fact that the trips were of course temporary in duration. What the trips do indicate, however, is that the sponsor is able and willing to travel independently from the appellant. She was not compelled to go to India, as far as I can see. Any desire to obtain herbal treatments in that country or to attend a wedding were clearly matters of choice. The sponsor was willing to be assisted by, if not strangers, then non-family members during the flights. There is nothing

in the evidence to indicate that her physical and/or mental health suffered as result of the trips. To an extent then, I find that there is not quite the very high level of dependency, both emotional and practical, asserted by the appellant and sponsor at certain points in the evidence as a whole.

21. In light of the medical evidence (in particular, the GP letter dated 7 July 2023), I find that the sponsor suffers from the following medical conditions:

- (a) Depression;
- (b) Chronic obstructive lung disease;
- (c) Asthma;
- (d) Diabetes;
- (e) Hypertension;
- (f) High cholesterol;
- (g) Back and leg pains.

22. The medical evidence as a whole does not indicate that any of the conditions in isolation, or even on a cumulative basis, represent a very significant state of ill-health on the sponsor's part.

23. The sponsor takes a variety of medication. There is no indication that her regime is ineffectual.

24. I accept that the sponsor has been admitted to hospital on what appears to be two occasions in 2023. These were related to coughing and wheezing. In respect of the July 2023 admission, she was discharged later the same day with appropriate medication. It is apparent that neither admission was related to particularly serious incidents.

25. The GP letter referred to above is the only item of medical evidence which provides any reference to the sponsor's circumstances. The letter refers to a consultation in October 2019, where the sponsor was complaining of depression and insomnia. She had reported feeling very

upset because the appellant had been placed in immigration detention. The appellant is recorded as being her “main carer” and she had reported that without him her physical health was deteriorating. She reported that she had not been eating and was failing to take medication. The letter records the sponsor to have stated that she felt “suicidal”. The appellant is said to help the sponsor with daily needs such as cooking, cleaning, dressing and making sure she takes her medication on time.

26. The GP letter is relevant evidence and I do place weight on it. However, it is only of some value. In the absence of any personal care needs assessment and/or detailed mental health reports (I will return to this, below), the author of the letter was only recording what had been reported to them by the sponsor and/or the appellant. It might appear as though the GP was not made aware of the alternative support provided by members of the community during the appellant’s detention. I find it to be highly unlikely that the sponsor did not take her medication for anything up to 70 days. In addition, the section of the letter dealing with a deterioration in health and suicidal feelings strongly suggests that it related back to 2019 and the appellant detention. It does not specifically address the sponsor’s current state of health.

27. I accept that the sponsor does have daily care needs, although the evidence from the appellant and sponsor is relatively light on details. The combination of the appellant’s and sponsor’s evidence, the nature of the medical conditions, and, to an extent, what Ms Bartlett has said, support that conclusion.

28. The question of care needs brings me to the first significant problem in the appellant’s case, namely the absence of any personal care needs assessment from, for example, the local authority/social services, or a private sector company. There has never been an evaluation by appropriate professionals of what the sponsor actually requires in light of her various medical conditions. There has been no assessment of whether adjustments/aids could be used to assist, whether appropriate personal care can only come from trained professionals, or suchlike. I do



not wish to diminish how the sponsor feels and what she prefers in terms of care, but the test is an objective one and her preferences (understandable as they may be and including those linked to cultural norms and the fact that her primary carer is her husband) are not sufficient unless it is clear that there is an absence of practical alternatives. One of the consequences of the correct legal approach is that the fact that the appellant does a variety of things for the sponsor on a daily basis does not of itself mean that the latter actually *requires* all of the assistance (as opposed to having a preference to be helped by her loving husband), nor that alternative sources of care will necessarily be inadequate.

29. In terms of the GP evidence, this does not in fact include any personal care assessment and the assistance provided by the appellant, as recorded in the relevant letters, can only have been known from what had been reported to the doctor. That does not entail a finding on my part that the appellant has been untruthful to the doctor. It does mean that the information was obtained from a subjective source, indeed a source with, to an extent, a vested interest in establishing a high level of care. I re-emphasise that the test in cases such as these is objective.
30. I am prepared to find that, as a matter of fact, the appellant does assist the sponsor with getting around, shopping, cooking, washing, getting to and from the toilet, and taking medication. In the absence of a strong evidential foundation (for example, a care needs assessment), I do not accept that the sponsor is unable to actually feed herself. There is no evidence on the possibility of the sponsor using relevant aids to assist the taking of her medication or in respect of any other potential care needs around the home. I acknowledge that the sponsor attended the hearing in a wheelchair. I do not of course know whether that has been provided by the local authority or a hospital.
31. With the above in mind, I am not prepared to accept that (a) everything which is in fact being done by the appellant is objectively required by the sponsor (as opposed to a genuine preference), or (b)

what is in fact being done by the appellant could not be appropriately replicated by alternative care provision (in respect of which, see below). I specifically find that the appellant has failed to demonstrate that the sponsor actually requires 24-hour care.

32. The second significant problem with the appellant's case is the absence of any psychiatric/psychological evidence relating to the sponsor. There is no report from a suitably qualified expert on matters such as the likely impact on the sponsor's mental health (and any causal link to deterioration of physical health) were she to be separated from the appellant. There is no assessment of what treatment might be available to mitigate the distress caused by a separation.

33. The third significant problem is the absence of any evidence from the local authority/social services. It is clear from the authorities, in particular RM (Pakistan), that the question of whether a relevant body can provide alternative care is potentially highly relevant, although not decisive. I emphasise what was said at [56] of RM (Pakistan):

"56... The availability of state-funded medical and/or social care may in many cases, make it hard for those who provide care for their elderly relatives [in the present case, substitute spouse for elderly relative] to bring themselves within the Regulations."

34. In the present case, there is nothing from any such source. Indeed, there has not even been an approach to obtain any such evidence. Therefore, I (much like Ms Bartlett and the First-tier Tribunal) have no means of assessing whether potential alternative care would be available, appropriate, or adequate. The views of the sponsor on this issue are relevant, but are not determinative. On my assessment of her evidence, and for the reasons set out below, the opinions of Ms Bartlett are not determinative either.

35. I am not prepared to simply assume that appropriate and adequate personal care provision would not be available from the local authority/social services.

36. I turn to consider Ms Bartlett's evidence, which has had to do a significant degree of "heavy lifting" in this case given the lack of evidence from other sources.
37. I acknowledge her expertise as a social worker and her experience and training, as set out at the beginning of her reports. I also take full account of her candid acknowledgement that she is not a clinician. That acknowledgement is important: there is in my judgment a material distinction between an assessment of mental health through established tests and the application of relevant criteria on the one hand, and impressions or reliance on non-clinical experience and/or academic studies on the other. Overall, I place reduced weight on Ms Bartlett's purported conclusions on the sponsor's mental health.
38. Ms Bartlett's first report is dated March 2020. She records that the appellant was providing a good deal of help to the sponsor at the time. At paragraph 4.4 she opines that the unavailability of the appellant to provide help would result in a rapid deterioration of the sponsor's health. It is not clear whether Ms Bartlett was aware of the help provided by other sources during the appellant's detention in 2019. Further, she was offering her opinion in the absence of any personal care needs assessment and/or relevant medical expert evidence, and/or evidence from the local authority as to what care package could potentially be put in place. On the medical evidence before me (I cannot ascertain whether Ms Bartlett had anything more than that), there was relatively little to go by in respect of prognoses and the potential impact of a separation. I find it difficult to avoid concluding that the author has perhaps at times inadvertently strayed into territory which was in truth that of clinical experts and/or engaged in might appear to be advocacy on half of the appellant. For example, at paragraph 4.13, Ms Bartlett states that:

"Whilst practical support can be provided by other individuals, fundamental for [the sponsor's] health is a familiarity of a current circumstances, partner and carer, her regimes, in the environment which is familiar to her, none of which can be adequately supported replicated if [the appellant] moves away. The availability of care and ease of access or otherwise, however, is

not the key message, because it is hard to envisage an alternative scenario for [sponsor] if [the appellant] were removed from the UK, than a very rapid deterioration in all aspects of her coping and functioning, which as a consequence would lead to a major deterioration of the physical and emotional/mental health and, in all likelihood, will trigger her premature death.”

39. A similar point can be made in respect of, for example, paragraph 5.1.
40. It is likely that it was the reference to a deterioration in health which prompted the First-tier Tribunal to say what it did at [38] of its decision. As discussed previously in my decision, that specific point must be seen in context: Ms Bartlett did not have a comprehensive evidential picture before her because of the absence of other relevant independent evidence. The First-tier Tribunal itself did not consider any additional independent evidence, nor did it address the question of alternative care provision.
41. Ms Bartlett quite fairly recognises the importance of any alternative care package being appropriate to the sponsor’s individual needs. She also provides relevant evidence, to which I attach appropriate weight, concerning the closeness of the couple’s relationship and the sponsor’s difficult family history.
42. On the question of alternative care, Ms Bartlett records the sponsor’s view that this would not be appropriate. The author herself suggests that the sponsor might refuse to engage with such care, or that this might result in a reduction in life expectancy. Again, the difficulty with this aspect of the report is the absence of evidence from the local authority or any private sector care providers, the absence of medical evidence, and the failure to address the community support which the sponsor had previously received. To a significant extent, Ms Bartlett was operating in an evidential vacuum of sorts.

43. The first addendum report from Ms Bartlett is dated June 2021. In essence, it reiterates what had been said in the first report. The risk to the sponsor's desire to live in the absence of the appellant is highlighted.
44. The latest addendum report from Ms Bartlett is dated August 2023. She states that the overall circumstances are similar to those outlined in the previous report. She refers to "increasing disability" on the sponsor's part. A further reference is made to deterioration in the sponsor's health if the appellant were absent. If the appellant was unavailable, Ms Bartlett concluded that urgent social care assessment would be required. Such an assessment, or at least a provisional view, has not of course been provided in this appeal.
45. In relation to alternative care provision, Ms Bartlett states that even if other carers were mindful and sensitive, the sponsor would be unable to invest in such provision because the appellant would not be there. Ms Bartlett was of the opinion that alternatives would not be appropriate, whether the sponsor remained in her own home or in residential care.
46. The author has expressed her opinions in very strong terms throughout her reports. As mentioned earlier, I do have some concerns as to whether Ms Bartlett has inadvertently strayed into areas not within her expertise and/or might have come close to engaging in advocacy. I mean no disrespect to her in saying this and I do take full account of her professional standing. However, one cannot escape the fact that her opinions have been formulated in the absence of other relevant independent evidence which could have been provided in this case. Ms Bartlett is not a clinician and is not in a position to assess whether the relevant local authority/social services would be able to provide appropriate and adequate alternative care.
47. I do place weight on her opinions in relation to the close nature of the appellant's relationship with the sponsor, the types of assistance which the appellant in fact provides to his wife, the sponsor's own views about the impact of the appellant leaving the United Kingdom, and the importance of stable and appropriate care in general. The overall weight I

attribute to Ms Bartlett's reports is, however, somewhat more limited than it otherwise might, given the absence of other evidential sources and the points I have made about certain aspects of her own evidence. As with her previous two reports, Ms Bartlett faced the problem of not having a full evidential picture due to the absence of reports from other sources.

48. I have considered the letters of support from the Guru Granth Gurdwara and Gurdwara Sri Guru Singh Sabha Southall. These confirm the support provided by these places of worship. Such support is entirely credible in light of the very strong Sikh tradition of assisting the community. This evidence does not add anything of substance to the particular question of the extent of the sponsor's daily living needs or care provision from the local authority/social services. On the other hand, in my judgment it does indicate an ability and willingness to provide at least some community assistance to the sponsor should the appellant have to leave the United Kingdom. In light of the previous connection between the couple and the Gurdwaras, it would be very unlikely if the latter would suddenly cease to offer help to the sponsor simply because the appellant was no longer present in this country.

49. Following on from the above, there has been meaningful support from the community in the past. I accept the appellant's evidence that members of the community (although not entirely clear, it may well be that the individuals concerned also attended the same Gurdwara, but that is not a decisive consideration) assisted the sponsor on several occasions in respect of her trips to India. I find that the appellant was able to ask individuals to look after the sponsor during the flight and that appropriate assistance was forthcoming. In addition, I find that individuals also provided what must have been relatively significant assistance to the sponsor whilst the appellant was detained for some 70 days in 2019. These examples are, in my view, strong indicators as to the provision of future assistance to the sponsor, albeit not on a professional basis and not amounting to a decisive consideration against the appellant's case. In summary, I find that members of the community

(including, but not limited to, those attending one or more of the Gurdwaras) would be willing and able to support the sponsor in a practical, meaningful, and culturally-appropriate manner should the appellant have to leave the United Kingdom. Such support would not be on a 24-hour basis, but would, I find, extend beyond simply shopping, cooking, and cleaning. It would be likely to include accompanying sponsor to medical appointments, helping to ensure the taking of medication, and even washing and toileting. I would however note that even if the extent of assistance did not incorporate the more intimate care needs, it would not make a material difference to my ultimate conclusion, given the other evidential matters referred to in my decision.

50. I have considered witness statements provided by other friends. Neither Mrs Gill nor Mr Pal Singh attended the hearing. Their evidence could not be interrogated. I place some, but only very limited, weight on their evidence. It adds little to the appellant's case.

51. There has been no clear evidence before me on the specific question of whether the sponsor would in fact wish to leave the United Kingdom if the appellant had to go. The general tenor of the evidence points towards her remaining here and that is the basis on which, for example, Ms Bartlett seems to have proceeded. I do note the presence of the sponsor's daughter in India. She is clearly devoted to her mother and has of course cared for her during previous trips to that country. On the face of it, there would appear to be little by way of significant obstacles to the sponsor accompanying the appellant to India. That is not a question which I need to make a firm finding on in the context of this case because I am proceeding on the basis that the sponsor would wish to remain in this country. If it were necessary, I would conclude that she could reasonably be expected to go to India.

52. Bringing all of the matters set out in my assessment of the evidence together, I conclude that the appellant has failed to demonstrate that the sponsor would be compelled to leave the United Kingdom (and the territory of the EU) if he had to leave this country for

an indefinite period. The “very demanding” threshold has not been met. This case does not in my judgment fall within the category of what has been described as the “exceptional” situations where the primary carer of a British citizen adult satisfies regulation 16(5) of the Regulations. I emphasise that no single factor has been determinative in my assessment; it has been very much a fact-sensitive evaluative judgment.

### **Anonymity**

53. There has never been an anonymity direction made in this appeal. There is no need for one to be made at this stage.

### **Notice of Decision**

**The making of the decision of the First-tier Tribunal did involve the making of an error on a point of law and that decision has been set aside.**

**The decision in this appeal is re-made and the appeal is dismissed.**

**H Norton-Taylor  
Judge of the Upper Tribunal  
Immigration and Asylum Chamber  
Dated: 22 August 2023**