



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

Appeal Number OA/17642/2013

THE IMMIGRATION ACTS

Heard at Sheldon Court
On 20th November 2014
Prepared 24th November 2014

Determination Promulgated
On 26th November 2014

Before

DEPUTY UPPER TRIBUNAL JUDGE PARKES

Between

Mdm HARMANMOHAN KAUR RAM SINGH
(ANONYMITY DIRECTION NOT MADE)

Appellant

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr A Burrett (Counsel)

For the Respondent: Mr D Mills (Home Office Presenting Officer)

DETERMINATION AND REASONS

1. In this appeal I have retained the term Appellant for the appellant before the First-tier Tribunal and Respondent for the Secretary of State. It is the Respondent's appeal against the determination of First-tier Tribunal Judge Mitchell promulgated on the 28th of March 2014 in which the Appellant's appeal was allowed.
2. The Appellant is a Malaysian national who had applied to enter the UK to receive medical care. The application was refused as it was believed that the level of care required was available,

the Appellant had her own house and pension and funds remitted from the UK as well as 2 daughters who could perform basic tasks.

3. The appeal was allowed with the Judge finding in paragraph 33 that he had not been provided with all the bank statements for the Sponsor's sister. In paragraph 34 the Judge noted the medical evidence that suggested that the Appellant was suffering from depression and missing her relatives, he expressed a degree of scepticism. In paragraph 35 he found that there was no person in Malaysia who could provide the care that the Appellant needed and that the cost of full-time care was unaffordable for the relatives.
4. The Judge then addressed the issue of whether the care in Malaysia was affordable in paragraph 36. He noted that the Appellant had her own property and that if she moved into full-time care her home could be sold and the proceeds used "to pay for her care for at least a significant period of time." He went on to find that this would be in addition to the money remitted from the UK and that given the high cost of care the capital would be quickly reduced and would become unaffordable. The paragraph concluded that costs would be significantly less in the UK.
5. It was submitted by Mr Burrett that the findings reflected the cultural position in Malaysia and that the basic finding was that the care required was not available. However I do not see how the determination can properly be read in that way. It is clear that for reasons given in the determination the Judge found that there were no family members or neighbours who could assist with her needs. The references to the "full cost of care" in paragraphs 33 and 35 and to "affordable" in paragraph 36 can only be on the basis that institutional funded care is available, if the Judge was only considering family care the question of cost and funding would not arise.
6. I find that the error in the determination is in paragraph 36. There it was found that the Appellant had her own property and that care would be affordable for a significant period of time, as noted in paragraph 4 above. To find that the money could eventually run out without identifying a timescale is an error and it has not been explained why the Appellant should not be expected to fund her care until such time as her funds run out in Malaysia. She would be expected to fund her care until her finances were depleted in the UK. It is an error to find that the Appellant should be admitted to the UK to avoid that happening in her own country.
7. The Sponsor being medically qualified would be able to provide some of the care that the Appellant needs but there would still be costs to be met by the NHS which raises the issue of the economic well-being of the UK. The analysis of costs and funds is non-existent and does not justify the conclusions reached.
8. The Respondent raised an issue with regard to the evidence provided by the Sponsor's sister and the finding that the Judge had not been provided with the full details of her finances. Whilst ordinarily in matters of interpretation the singular includes the plural and vice versa Mr Burrett noted that there was only one sponsor named and the Immigration Rules relate to the Sponsor's ability to meet the costs of care in the Appellant's home country. That is not a matter that I have to decide but there is force in Mr Burrett's submission.
9. Given the finding that there is an error in the Judge's findings on the ability of the Appellant to fund her care in Malaysia it is appropriate to set the determination aside. In the absence of

appropriate findings I agree with the submissions made that it is appropriate to remit the determination to the First-tier Tribunal for a re-hearing on all matters.

CONCLUSIONS

The making of the decision of the First-tier Tribunal involved the making of an error on a point of law.

I set aside the decision.

The appeal is remitted to the First-tier Tribunal for re-hearing on all issues, directions are given separately.

Anonymity

The First-tier Tribunal did not make an order pursuant to rule 45(4)(i) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 and I make no order.

Fee Award

In allowing the Secretary of State's appeal I make no fee award.

Signed:

Deputy Judge of the Upper Tribunal (IAC)

Dated: 26th November 2014