



IAC-AH-DP-V1

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

Appeal Number: IA/01171/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 27th January 2016**

**Decision & Reasons Promulgated
On 15th February 2016**

Before

DEPUTY UPPER TRIBUNAL JUDGE M A HALL

Between

**SUMATHY RAMACHANDRAN
(ANONYMITY ORDER NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr T Gaisford of Counsel instructed by Sriharans Solicitors
For the Respondent: Mr S Kandola, Senior Home Office Presenting Officer

DECISION AND REASONS

Introduction and Background

1. The Appellant appeals against the decision of Judge Geraint Jones QC of the First-tier Tribunal (the FtT) promulgated on 29th July 2013.
2. The Appellant is a female Sri Lankan citizen born 28th June 1968. She had leave to remain in the United Kingdom until 11th October 2014, and on 3rd October 2014 applied for further leave to remain.

3. The application was made using Form FLR(FP), the Appellant indicating in that form that she relied upon her private life in the United Kingdom in order to be granted further leave.
4. The Respondent refused the application on 12th December 2014, making a combined decision to refuse to vary leave to remain, and making a decision to remove the Appellant from the United Kingdom.
5. The Respondent issued a reasons for refusal letter dated 12th December 2014 indicating that the application had been considered under paragraph 276ADE(1), but it was not accepted that the Appellant satisfied the requirements of any of the provisions contained therein. The Respondent also indicated that consideration had been given as to whether there were any exceptional circumstances justifying leave to remain outside the Immigration Rules, and it had been considered that there were not.
6. The Respondent also noted that the Appellant in her claim, had stated that she cared for her elderly parents, and consideration had been given to this, but it was noted that the Appellant had siblings present and settled in the United Kingdom, who could offer the care her elderly parents required.
7. The Appellant appealed, and the FtT heard the appeal on 15th July 2015. The FtT rejected a submission made by the Appellant's Counsel, that the Respondent's decision was not in accordance with the law as the Respondent had failed to consider her own guidance on carers. The FtT after hearing evidence from the Appellant, her mother, and her brother, decided that the requirements of paragraph 276ADE(1) could not be satisfied, and that the appeal could not succeed with reference to Article 8 of the 1950 European Convention on Human Rights (the 1950 Convention) outside the Immigration Rules. The appeal was dismissed both under the Immigration Rules, and on human rights grounds.
8. The Appellant applied for permission to appeal to the Upper Tribunal relying upon three grounds which may be summarised as follows.
9. Firstly it was submitted that the FtT had erred in law by failing to decide that the Respondent's decision was unlawful, on the basis that the Respondent had failed to consider her own policy guidance on carers.
10. Secondly it was submitted that the FtT had erred in law by failing to properly apply the authorities as to what constitutes family life.
11. Thirdly it was submitted that the FtT had erred in law by failing to consider and apply Beoku-Betts [2008] UKHL 39 to the facts of the Appellant's case.
12. Permission to appeal was granted by Judge J M Holmes of the FtT in the following terms;
 - "3. Arguably the Judge fell into error in his approach to the issue of whether the Appellant was a carer for her two elderly and infirm parents. Whilst she had not claimed in her application form to be in receipt of carer's allowance, she had identified that she and her adult brother lived with their parents. In the solicitor's covering letter to the application [ApBp21] she did claim to be the carer for her parents. Contrary to the claim in the grounds the Respondent did not explicitly

accept that to be true in the refusal decision, but it was arguably always one of the principal planks to her application for leave. As such, if she established the primary facts relied upon, it was arguably always open to the Appellant to argue that the decision was not in accordance with the law, because the Respondent had not applied her own policy on carers (subject to any issue of fairness that might arise – and the Respondent appears to have raised none). What is not clear to me from this application, which does not provide the policy relied upon, or identify the relevant passages, is whether if the Tribunal had accepted that she was a carer for her parents (and there is no finding upon the issue) the Appellant could demonstrate that the relevant policy was not followed.

4. There appears to be little merit in grounds 2 and 3, save that there were arguably no clear findings upon who provides care to the Appellant's parents, and thus an arguably flawed approach to what the consequences would be for them in the event of the Appellant's removal."
13. Following the grant of permission the Respondent lodged a response pursuant to rule 24 of the Tribunal Procedure (Upper Tribunal) Rules 2008. In summary it was contended that the FtT had not erred in law and was entitled to reject the argument that the Respondent's decision was not in accordance with the law. In addition the FtT had made a finding that the Appellant did not have any ties with her parents, beyond normal emotional ties, and from this it could be inferred that the FtT had accepted that the Appellant was not a carer. It was contended that the FtT had given adequate reasons for the conclusions reached.
14. Directions were subsequently issued that there should be an oral hearing before the Upper Tribunal to ascertain whether the FtT had erred in law such that the decision must be set aside.

The Appellant's Submissions

15. Mr Gaisford relied and expanded upon the grounds contained within the application for permission to appeal. In brief summary it was contended in relation to the first ground, that it was '**Robinson** obvious' that the Appellant had been requesting leave to remain to continue to care for a sick relative. This had in fact been acknowledged in the Respondent's refusal letter. Therefore the Respondent was obliged to apply her own policy contained in the IDIs contained at chapter 17 section 2. It was submitted that the IDI contained no requirement that the carer's policy must be expressly referred to, and there was no particular application form to be used to make an application for leave to remain as a carer.
16. It was submitted that the FtT had erred in law by rejecting the submission that the Respondent's decision was not in accordance with the law, and should have allowed the appeal to the extent that the decision remained outstanding before the Respondent.
17. In relation to the second ground, Mr Gaisford referred to the case law that is set out in the application. It was submitted that the FtT had not taken into account evidence provided by the Appellant, which disclosed

dependency between herself and her parents, and which indicated that she had consistently cohabited with her parents except for a short period of time.

18. In relation to the third ground it was submitted that the FtT had not taken into account the effect of the Appellant's proposed removal from the United Kingdom upon her aged and infirm parents, which should have been an extremely important factor in the balancing exercise.

The Respondent's Submissions

19. Mr Kandola relied upon the rule 24 response and in relation to the first Ground of Appeal, submitted that it was not clear that the Appellant had made an application for leave to remain as a carer. Mr Kandola questioned whether in any event, taking into account the changes brought about by the Immigration Act 2014, which abolished the ground of appeal in relation to finding a decision not in accordance with the law, whether it would have been open to the FtT to make such a finding. Mr Kandola raised this point but acknowledged that he was not in a position to make submissions upon it one way or the other.
20. In relation to the second ground Mr Kandola noted that no specific submissions were made to the FtT that family life existed between the Appellant and her parents, taking into account that they were all adults. The FtT was entitled to make the finding at paragraph 21, that family life did not exist between the Appellant and her parents, which would engage Article 8.
21. In relation to the third ground, Mr Kandola pointed out that the Appellant had adult siblings in the United Kingdom who would be able to care for her parents, and that the private life built up by the Appellant since she arrived in the United Kingdom in 2008, had been built when she had a precarious immigration status. I was asked to find no material error of law.

The Appellant's Response

22. Mr Gaisford repeated that there was no requirement that a particular application form should be used when applying for leave to remain as a carer. In relation to the point raised for the first time by Mr Kandola, as to whether the FtT had jurisdiction to find a decision not in accordance with the law, Mr Gaisford not surprisingly had no direct authority on this point. He indicated that his view was that because the application had been made prior to the appeal rights being amended by the Immigration Act 2014, the FtT did in fact have such jurisdiction.
23. At the conclusion of oral submissions I reserved my decision.

My Conclusions and Reasons

24. I am persuaded that the FtT erred in law as contended in the first ground of appeal. I find that the error is material for the following reasons.

25. The application for leave to remain was not made solely on the basis of leave to remain as a carer. However the IDIs do not indicate that applying for leave as a carer must be the only application made.
26. I accept the submissions made on behalf of the Appellant that there is no particular form to be used for making an application for leave to remain as a carer. The Appellant did refer to her private life in her application form at section 2. There was however no section within that application form that specifically applied to an application for leave to remain as a carer.
27. The FtT found that the Appellant's application was not put on the basis that she is a carer for any given individual, noting an absence of any reference to an application as a carer in the application form, and only a passing reference made in the covering letter from the Appellant's solicitors. There was no specific request for the application to be considered under a carer's concession. In addition, the grounds of appeal to the FtT did not make any reference to an application for leave to remain as a carer, or the failure of the Respondent to apply her own policy. Moreover, there was no application in writing to amend the grounds of appeal, and the oral application made at the hearing was referred to as an unspecified amendment to the grounds, the FtT finding that an unspecified proposed amendment could not have any real prospect of success, as the initial application had not been made with reference to the carer's policy. The FtT did not accept it was '**Robinson** obvious' that the Appellant was seeking leave to remain as the carer of her parents. The application made on behalf of the Appellant, was in my view, not as clear as it should have been. However there was, as noted by the FtT, a reference in the solicitor's covering letter dated 3rd October 2014 to the Appellant and her brother living with her parents, and the following was stated;

"Client's mother Mrs Vigneswary Ramachandran is a heart patient and had a stroke in June 2011 due to a block in her coronary arteries. This has been treated by fixing a stent in her arteries. Therefore both of client's parents are looked after by client."
28. Enclosed with the covering letter was medical evidence in relation to the Appellant's parents. What was not noted by the FtT were references to the Appellant caring for her parents, in a letter from the parents dated 12th September 2014 in the following terms;

"My husband is a disability patient. His leg has been amputated and he is unable to move without the support. Both of us are heart patients as well. We always require attendance of our daughter who looks after us. We need her physical, moral and emotional support. We are attaching our medical letters for your reference."
29. In addition there was a letter from the Appellant's brother dated 19th September 2014 which stated the following;

"Also, my sister needs to take care of our elderly parents. They are dependent and need someone watching over them. Since I am employed here, I need to have my sister nearby to help them if there is an emergency in the forthcoming days."

30. Further there was a letter dated 14th September 2014 from the Appellant's sister who stated the following;
- "My parents also very happy at present because of all our family members here and spending time with them and she is there to help my sick parents whenever they needed."
31. The letters referred to above were submitted to the Respondent with the solicitor's covering letter and the medical evidence, therefore there is evidence that the Appellant cares for her parents, which was not considered by the FtT.
32. In addition what was not considered by the FtT is the acknowledgement by the Respondent in the reasons for refusal letter dated 12th December 2014 in the following terms;
- "In support of your claim you state that you care for your elderly parents. This has been carefully considered however, it is noted that you have a brother and sister who are present and settled in the UK and therefore can offer the care your elderly parents require."
33. I find this acknowledgement by the Respondent significant. It was therefore clear to the Respondent that the Appellant claimed to care for her elderly parents.
34. It appears that the FtT did not consider the terms of the Respondent's policy on carers set out at chapter 17, section 2 of the IDIs. I set out below 17.4 in part;
- "17.4 Requests for further leave to remain
Where an application is received requesting a further period of leave to continue to care for a sick relative or friend further detailed enquiries must be made to establish the full facts of the case."
35. These further enquiries entail requesting the applicant for leave to remain as a carer, to produce documentation from an NHS consultant, social services if they are involved, and any further evidence that alternative arrangements have been or are being actively explored. In addition full details of the patient's family in the United Kingdom should be supplied and details of the applicant's circumstances in her home country and evidence that sufficient funds are available to maintain and accommodate without working or recourse to public funds.
36. It is evident the Respondent was put on notice that the Appellant claimed to care for her parents, and acknowledged this, but then did not carry out any further enquiries as required by 17.4 of the policy.
37. I find that the FtT materially erred in not considering relevant evidence which indicated that the Respondent was aware from the contents of the application, that the Appellant claimed to be caring for her parents.
38. I find that the FtT erred in stating that the Appellant's Counsel applied at the hearing for an unspecified amendment to the grounds of appeal. The amendment was specific, in that the request was to amend the grounds to contend that the Respondent's decision was not in accordance with the

law, because the Respondent's policy on carers had not been considered. The FtT had the power to amend the grounds, and that would not cause prejudice to the Respondent, as an adjournment could have been applied for by the Respondent to consider the application raised at the hearing by the Appellant.

39. The conclusion therefore is that the FtT erred in law in rejecting the submission that the Respondent's decision was not in accordance with the law as the policy on carers had not been considered. I am satisfied that because the Respondent's decision was made on 12th December 2014, the power to find a decision not in accordance with the law was still open to the FtT, although that may not be the case after the provisions of the Immigration Act 2014 have been fully implemented.
40. In those circumstances, because the FtT decision was made following an unlawful decision, I see no useful purpose in going on to consider the second and third grounds of appeal.
41. I conclude that the FtT decision must be set aside with no findings preserved. I re-make the decision by allowing the Appellant's appeal to the limited extent that the Respondent's decision is not in accordance with the law, and therefore remains outstanding before the Respondent for a lawful decision to be made, and so that the policy in relation to carers as set out in chapter 17, section 2 of the IDIs can be considered.

Notice of Decision

The decision of the FtT involved the making of an error of law such that it is set aside.

The appeal is allowed to the extent that the Respondent's decision is not in accordance with the law, therefore the decision remains outstanding before the Respondent.

Anonymity

The FtT made no anonymity direction. There has been no request to the Upper Tribunal for anonymity and I see no need to make an anonymity order.

Signed

Date: 1st February 2016

Deputy Upper Tribunal Judge M A Hall

TO THE RESPONDENT FEE AWARD

The appeal has been allowed to a limited extent. In those circumstances I do not find it appropriate to make a fee award.

Signed

Date: 1st February 2016

Deputy Upper Tribunal Judge M A Hall