



IAC-FH-AR-V1

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

Appeal Number: OA/06155/2015

THE IMMIGRATION ACTS

Heard at Field House
On 7 January 2016

Decision & Reasons Promulgated
On 21 January 2016

Before

UPPER TRIBUNAL JUDGE JORDAN

Between

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Appellant

and

D M

(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Miss J Isherwood, Home Office Presenting Officer

For the Respondent: Miss E Greenwood, Counsel, instructed by G Singh Solicitors

DECISION AND REASONS

1. The appellant is a citizen of India who was born on 10 December 1927 and he is now 88 years old. The Secretary of State appeals against the determination of Judge Ross promulgated on 5 August 2015 in which she allowed the appellant's appeal against the decision of the Entry Clearance Officer in Bombay to refuse the appellant entry clearance in order to join his son in the United Kingdom.
2. The circumstances of the case can be set out by reference to the earlier determination of First-tier Tribunal Judge Blum, as he then was, whose determination was

promulgated in October 2013. At that stage he had two appellants before him; both the appellant before me and his wife. Both were claiming to come to the United Kingdom to be looked after by their children. They were both elderly, although Mrs M was slightly younger, and the judge properly determined that there was no reason why, although they were relatively elderly couple, they could not properly be provided for physically by care facilities in the form of food, housekeeping and so on. There was therefore no need for them to come to the United Kingdom in order to pursue their life here being looked after (but not as a matter of absolute need) by their children.

3. The situation has changed since that time in that Mrs M has died. The appellant before me is now on his own. He is now somewhat older and, importantly, he is now suffering from Alzheimer's.
4. The Secretary of State has a process which permits individuals to apply for entry clearance for the purpose of care provided by relatives in the United Kingdom. It is entirely for the Secretary of State to determine whether or not, as a matter of policy, she is prepared to permit such people to enter the United Kingdom, given that they have made no contribution to the country by way of national insurance contributions, given the fact that when a son or a daughter decides to leave the country of their origin and leave their parents in situ, it would have been open to the Secretary of State to decide that, in those circumstances, there should be no provision made and that any immigrants to this country, even British citizens, should not be able to call for their parents to join them.
5. However the Secretary of State has not done that and has produced a Rule which permits this to occur in the circumstances set out in those Rules. They are known as E-ECDR2.4 and E-ECDR2.5.
6. The requirements are that the applicants, if the sponsor's parents, must as a result of age illness or disability require long term personal care to perform every day tasks. That was not the case when the matter came before Judge Blum. However it is the case now. The evidence of this is provided by Dr Buch who says that the Alzheimer's disease from which the appellant suffers has reached the stage where he needs help even with very basic things such as making a cup of tea. The level of care that is required is support of a very different nature from the support provided by Tiffin tins and a maid to look after him and keep the house in order.
7. The provisions of E-CDR2.5 require that the applicant 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 it is not available and there is no person in that country who can reasonably provide it or it is not affordable. That requirement is satisfied. The issue of affordability does not enter into this appeal because it is accepted that the children in the United Kingdom have substantial means. The sponsor is also required to undertake to provide the care that is needed without making a call upon public funds.

8. Consequently the first issue is whether or not the appellant is of an age and with an illness or disability which requires long term personal care to perform everyday tasks. I am quite satisfied that this is the case. He is 88. He is suffering from Alzheimer's and he is unable to do very basic things like making a cup of tea. Indeed I asked Miss Isherwood in the course of the argument that if an individual suffering from Alzheimer's is not able to establish that he requires long term personal care then it is difficult to envisage anybody who does require long term personal care to perform everyday tasks. It seems to me that the only stage beyond the stage of a person like this appellant suffering from Alzheimer's disease is somebody who is in a coma.
9. The next issue is whether or not that level of care can be provided by the sponsors in the United Kingdom whilst the appellant remains in India. The answer is provided in the evidence of Dr Buch. What he says is that there are no such facilities available in India and that in particular the facilities in the area in which the appellant lives are inadequate to provide the sort of care which is needed.
10. That is the view of a professional consulting physician with a hospital post. It does not seem to me that the Secretary of State can say that the evidence of Dr Buch can be rejected as being entirely wrong without adducing some additional material to back that up. The judge accepted the evidence. He said at paragraph 9.

"I am satisfied given the oral evidence of the appellant's sons and the medical evidence of Dr Buch that the appellant is unable to obtain the required level of care in India even with the financial support from his sons. The level of care required by the appellant is not merely physical such as cleaning, housekeeping or administering medication but will involve long term personal care tailored to mental health issues."
11. That was a finding of fact which was reasonably open to the judge on the basis of the evidence of Dr Buch and it cannot be said that it was irrational. It is true that the Secretary of State countered the claim by providing a fact sheet on India in which on pages 9 and 10 there was a reference to the facilities available. There is a programme for older persons which has been implemented since 1992 with the objective of improving the quality of life of senior citizens by providing basic amenities like shelter, food, medical care and entertainment opportunities. It does not seem to me this is the same as the requirements that I have to look at and that is whether there is a requirement for long term personal care. There is also a suggestion that there are old age homes and day centres and that there are indeed day centres for those with Alzheimer's disease. A day centre may provide respite for persons suffering from Alzheimer's in which he can go and spend some time where he is provided with warmth and some organised activity but that is very different, it seems to me, from long term personal care including help in making cups of tea. And so the evidence provided by the Entry Clearance Officer simply did not go to the issues in this case.
12. My own sense is that to suggest that the care could be provided by a maid at a reasonable cost of £100 a month, as I think it was suggested, does not suffice. It may have been the case that there are agency nurses, that there are trained carers, that there are live-in practitioners who can go into a person's home, but once Dr Buch had

said that these facilities are not available, it really required the Entry Clearance Officer to say what facilities that were available and the fact sheet does not provide this.

Notice of Decision

13. For these reasons I am satisfied that the Immigration Judge on the material before her reached a decision which was legally sustainable and it is for those reasons that I dismiss the appeal of the Secretary of State.
14. No anonymity direction is made.

ANDREW JORDAN
JUDGE OF THE UPPER TRIBUNAL