



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

Appeal Number: IA/27442/2015

**THE IMMIGRATION ACTS**

**Heard at Field House**

**On 22 August 2017**

**Decision  
Promulgated**

**On 8 September 2017**

**&**

**Reasons**

**Before**

**UPPER TRIBUNAL JUDGE ALLEN**

**Between**

**ABDOOL RAHEEM KHAN KHEERDALI  
(ANONYMITY DIRECTION NOT MADE)**

**and**

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

Appellant

Respondent

**Representation:**

For the Appellant: Ms A Jones, instructed by Connaught Law

For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant is a citizen of Mauritius. He appealed to the First-tier Tribunal against the respondent's decision of 13 July 2015 refusing his application for a derivative residence card as the primary carer of his wife Saleema Ali, a British citizen.
2. The judge noted the relevant test which is in effect that the appellant's wife would be unable to reside in the United Kingdom or in another EEA state if he were required to leave.

3. The judge noted the relevant medical evidence. Mrs Ali is 72 years old and suffers from multiple health problems. Her GP supported her assertion that this affected her ability to function on a day-to-day basis and that she consequently needed help from her husband for activities, such as cooking and washing and also housekeeping. It was credible that given her mobility limitations her husband would undertake the majority of the shopping and the household chores and take her to appointments. He helped her bath and dress. It was credible that he occasionally had to remind her to take her medication. The judge was satisfied that the appellant is his wife's primary carer and that there are not any relatives to whom she could turn for day-to-day support.
4. The judge went on to say that although she accepted the help provided by the appellant she was not persuaded that Mrs Ali was so significantly physically or mentally disabled that she could not remain in the United Kingdom without him. Nor did she accept that no alternative care arrangements could be made.
5. The judge went on to say that in reaching this conclusion she placed significant weight on the fact that the appellant did not provide any documentary evidence or enquiries made regarding alternative care options or evidence as to why such options would not be reasonable. She said that for example, Mrs Ali had not applied for a personal independence payment or disability living allowance which could provide her with another source of income for which she could fund the employment, or a cleaner or use it to pay for taxis to take her to appointments.
6. The judge also said that she placed significant weight on the fact that Mrs Ali's GP had not made any arrangements for an occupational therapist to visit her house, to suggest any aids or adaptations that could assist her in day-to-day living and that other than her walking stick she did not have such. The judge found it was probable that by using aids such as a bath rail Mrs Ali's ability to get in and out of her bath would be improved and consequently she would become more able to care for herself and there was no evidence before the judge that Mrs Ali's local authority would be unwilling or unable to provide her with care if so required. The judge accepted that Mrs Ali wanted her husband to be able to remain with her in the United Kingdom and that they have a genuine, loving and supportive relationship. She accepted that Mrs Ali would be very sad if he were unable to remain in the United Kingdom. The judge was not however satisfied that Mrs Ali was or would become so disabled that she could not care for herself on a day-to-day basis to such an extent that she would be unable to remain in the United Kingdom without the appellant and was satisfied that any help she did require could be provided by another agency. The appeal was therefore dismissed.
7. The appellant sought permission to appeal this decision and was granted permission limited to ground 2, in which it was argued that the appellant's wife had made it clear in evidence that she did not receive disability living

allowance or personal independence payments and indeed the fact was that she was not eligible for either of these benefits as they were only available to people under 65 and she is 72. It was argued as a consequence that the judge had erred in taking into account irrelevant information and the conclusions were unsafe.

8. In her submissions Ms Jones noted that there had been no challenge at the hearing to the medical or oral evidence. The appellant was his wife's primary carer and there were no relatives to turn to for day-to-day support. The judge had pointed out at paragraph 11 of her determination that there had been no enquiries about alternatives and no benefits applications. It was clear that the benefits were not available and significant weight had been placed on this. It could not be said that the conclusion was inevitable albeit that other matters were taken into account, and this amounted to a material error of law.
9. In his submissions Mr Clarke argued that the test was a high one since it had to be shown that the British citizen in question would be unable to reside in the United Kingdom. She would in effect be forced to leave. It was the case, as Ms Jones had argued, that positive findings were made at paragraph 9 of the judge's decision, but it was clear from paragraph 10 that the judge was not persuaded that no alternative care arrangements could be made and there was no evidence of enquiries as to alternative care options being pursued by the appellant. In light of that it was hard to see how the appellant could succeed whether or not the erroneous matters had been taken into account. Attention should be paid to paragraph 10 also and the finding that no arrangements for occupational therapists had been made by the GP. On the lack of evidence of alternatives for the appellant's wife he could not succeed.
10. By way of reply Ms Jones argued that the judge had said that there was significant weight to be attached and that was an error and it was hard to see how the finding could stand.
11. I reserved my determination.
12. It is common ground that the judge erred in considering that Mrs Ali could apply for a personal independence payment or disability living allowance, which could provide her with another source of income from which she could fund the employment of a cleaner or use it to pay for taxis to take her to appointments. The general matter upon which the judge placed significant weight at paragraph 11 was the fact that the appellant had not provided any documentary evidence of enquiries made regarding alternative care options or evidence as to why such options would not be reasonable, and gave the lack of an application for the two benefits as an example of this. I think that they have to be seen in that light only. The essential concern of the judge was with the failure to make enquiries into alternative care options and also at paragraph 12 to place significant weight on the fact that the GP had not made any arrangements for an

occupational therapist to visit the house, to suggest any aids or adaptations that could assist Mrs Ali in her day-to-day living. Nor was there any evidence before the judge that Mrs Ali's local authority would be unwilling or unable to provide her with care if so required.

13. Although the judge erred therefore with regard to the failure to apply for payments for which Mrs Ali was not eligible, I consider that it is necessary to take the findings as a whole, in particular at paragraphs 11 and 12, but also bearing in mind the context of paragraph 9 and the findings at paragraph 10 which lead me to conclude that the judge did not err in law. In light of the failure to make enquiries about alternative care options or evidence as to why such options would not be reasonable or that the local authority would be unwilling or unable to provide Mrs Ali with care if so required, I consider it was properly open to the judge to find that the requirements of Regulation 15A(4A)(c) had not been made out, and as a consequence that the appeal fell to be dismissed. I find no error of law in the judge's decision and accordingly the decision dismissing the appeal is maintained.

14. No anonymity direction is made.

A handwritten signature in black ink, appearing to be 'A. Allen', written in a cursive style.

Signed

Date 7 September 2017

Upper Tribunal Judge Allen