



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

Appeal Number: IA/30755/2013

**THE IMMIGRATION ACTS**

**Heard at Glasgow  
on 16<sup>th</sup> June 2014**

**Determination  
Promulgated  
on 20<sup>th</sup> June 2014**

**Before**

**UPPER TRIBUNAL JUDGE MACLEMAN**

**Between**

**BAKSHISH SINGH**

Appellant

**and**

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

Respondent

For the Appellant: Mr M Shoaib, of Shoaib Associates  
For the Respondent: Mr A Mullen, Senior Presenting Officer

No anonymity order requested or made

**DETERMINATION AND REASONS**

1. By notice and letter dated 3<sup>rd</sup> July 2013 the respondent refused the appellant's application for a derivative residence card under Regulations 15A(4A), 15A(7) and 18A of the Immigration (EEA) Regulations 2006. The crucial point was that the appellant was unable to show in terms of Regulation 15A(4A)(c) that "the relevant British citizen [his wife, or 'sponsor'] would be unable to reside in the UK or in another EEA state if [the appellant] were required to leave".
2. That central point was addressed in the grounds of appeal to the FtT (prepared by previous agents) which include the proposition that the appellant's wife depends upon the appellant 24 hours a day, seven days per week and without his presence she would be unable to care for

herself; but, as noted below, the evidence did not establish that contention.

3. First-tier Tribunal Judge Mozolowski dismissed the appeal by determination promulgated on 6<sup>th</sup> January 2014. At paragraph 15 the judge held that the appellant was not the direct relative or legal guardian of the sponsor in terms of the Regulations, a point which had not been put in dispute by the respondent. However, for various reasons the judge also held that the evidence did not show that she would be unable to reside in the UK if he were required to leave.

4. These are the grounds of appeal to the Upper Tribunal:

The judge was wrong to conclude that the appellant was not the relative or legal guardian and therefore not the carer of the sponsor.

The relationship was clear that the couple was lawfully married and bear the responsibility of his wife who has serious mental illness. For the above reasons the appellant has become full-time primary carer.

The judge is also wrong to conclude that 'there is no indication of sponsor planning to act on those thoughts (suicidal ideation)'.

It is clear from medical evidence that 'there would be risk she might act on her suicidal thoughts and risk would need to be carefully monitored'.

The judge has ignored or tried to play down the risk factor and medical evidence that was based on facts of the case.

5. I find the grounds unhelpful as to identifying any reason why it might be said that the judge went wrong on whether the appellant's wife would be unable to reside in the UK if he were required to leave, or why the answer to that question might not be decisive of the case.

6. Further to the grounds, Mr Shoab said that a spouse should be considered as a direct relative. He made no reference to authority. He said that the second issue was whether the appellant was the primary carer of a British citizen, as to which there was overwhelming evidence, including numerous medical reports. The determination should therefore be set aside and reversed.

7. Mr Mullen in response said that the Regulation specified *three* criteria, *all* of which had to be met. The Respondent did not dispute that criteria (a) - primary carer - and (b) - relevant British citizen residing in the UK - were both met. However, the evidence fell well short of disclosing (c) that the appellant's wife would be unable to reside in the UK without him. The case was therefore bound to fail. The appellant's wife, although she has serious medical difficulties, is capable of making her own decisions and of living autonomously with the support available to her as a UK citizen, without the presence of the appellant.

8. Mr Shoab in reply said that when the sponsor visited India she was accompanied by and cared for by her sister-in-law. The medical evidence

showed that she relied significantly on her husband and that his departure would have an adverse impact upon her. His understanding of *Zambrano* and of the Regulations was that the appellant could succeed by showing the sponsor's dependence. (The Regulations now give effect to *Zambrano*, to which no reference was made beyond mentioning the name of the case.) Mr Shoib understood that this is not a case of an EU citizen having to leave the EU.

9. I asked Mr Shoib if he was able to refer to any authority that the case could succeed by showing a detrimental effect on the sponsor, short of inability to reside in the UK as specified in the Regulation. Mr Shoib said:

“The case should be decided on the balance of probability because of the degree of attachment, the ties and commitment of the appellant, it is in the interests of the public for the appellant to remain in the UK and play an active role in the life of the sponsor who suffers from a very serious medical condition, the highest condition of its type”.

10. I reserved my determination.
11. The submissions did not direct me to any definition or authority on whether a spouse falls within the category of a direct relative. The decision under appeal assumes that a spouse does. The judge may have gone wrong on the point. However, it is not material to the outcome.
12. Mr Shoib was unable to point to any authority suggesting that the decisive question was anything other than whether in terms of Regulation 15A(4A)(c) the appellant's wife would be unable to reside in the UK if he were required to leave.
13. No error of fact or law has been shown in the judge's conclusion that such inability has not been shown. The appellant's wife may be better cared for in significant respects by having the Appellant here, but his absence does not result in her inability to reside in the UK. The determination of the First-tier Tribunal shall stand.



17 June 2014  
Upper Tribunal Judge Macleman