Upper Tribunal
(Immigration and Asylum Chamber) **Appeal Number: HU/25465/2016**

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 6th April 2018	**On 1st May 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE D E TAYLOR

Between

GHANAMBIHAI NADESAN
(ANONYMITY DIRECTION NOT MADE)

Appellant

and

ENTRY CLEARANCE OFFICER – CHENNAI

Respondent

Representation:

For the Appellant: Ms Seehra of Counsel instructed by Nag Law Solicitors
For the Respondent: Mr L Tarlow, Home Office Presenting Officer

DECISION AND REASONS

1. This is the appellant's appeal against the decision of Judge Sweet made following a hearing at Hatton Cross on 9th October 2017.

Background

2. The appellant is a citizen of Sri Lanka born on 29th June 1937. She applied to come to the UK as an adult dependent relative under Appendix FM of the Immigration Rules HC 395 as amended but was refused on 25th October 2016.

3. The requirements for entry clearance as an adult dependent relative are set out in Section E-ECDR of Appendix FM of the Immigration Rules. The

relevant paragraph is E-ECDR.2.5 which states that the appellant 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:

(a) it is not available and there is no person in their country who can reasonably provide it; or

(b) it is not affordable.

4. The appellant did not argue that care was not affordable. She did however submit that it was not available.

5. She has six children. Two are in the UK, one is in Canada, one in Switzerland, and one in Australia. She has one son in Sri Lanka who lives in Colombo and who is not on good terms with her. She suffers from a number of medical conditions including arthritis, hypertension, numbness, hearing impairment, memory problems and walks with a Zimmer frame. Her husband, who used to be her carer, died in May 2016. She remains in the family home which is in a town right in the north of Jaffna.

6. The judge was not satisfied that there was sufficient evidence that care for her was not available. He said that she currently relies on help from her neighbours and frequent visits from family members.

7. He then wrote:

> "It was submitted that the appellant and her late husband have employed servants in the past but they have proved to be unreliable and untrustworthy. There was also a suggestion that because the appellant speaks Tamil and does not speak Sinhalese, she will not be able to access care homes, where the Tamil language is not used. I am not satisfied that sufficient enquiries have been made, or evidence provided, as to the unavailability of such care in Sri Lanka. For these reasons I am not persuaded that she can meet the requirements of Appendix FM in respect of entry clearance as an adult dependent relative".

8. So far as Article 8 was concerned, he said:

> "Nor do I accept that she should succeed under Article 8 ECHR, because she has lived in Sri Lanka all her life with her late husband and other family members, and there is no reason why those family members cannot continue to make visits to her and/or arrange suitable care for her in her home country. Her circumstances are not exceptional or compelling, nor would there be any breach of any claimed Article 8 ECHR rights by this decision. I therefore also reject her claim under Article 8 ECHR outside the Immigration Rules".

The Grounds of Application

9. The appellant sought permission to appeal on the grounds that the judge had given insufficient reasons for rejecting the evidence given by the

sponsor in relation to care available in Sri Lanka. There was no finding that the witnesses lacked credibility and no reasons given why their evidence was insufficient.

10. Second, there was no Razgar-style assessment of Article 8. All the appellant's children live abroad save for one son from whom she is essentially estranged. Even though they are all adults, she is physically and emotionally dependent upon her children. The evidence before the judge was that the present arrangements of frequent visits from far-flung family members could not continue and there was no suitable care available for her which could meet her physical and emotional needs.

11. Permission to appeal was granted by Judge Osborne for the reasons stated in the grounds on 15th January 2018.

Submissions

12. Ms Seehra relied on her grounds. She submitted that clear evidence was given in relation to the appellant's medical problems and no adverse credibility findings were made. There was strong evidence from the appellant's doctor which confirmed the extent of her disabilities. Witness evidence from both the sponsor and her husband had been given to the effect that there was no care available for the appellant except in Colombo where she would face language difficulties since she was a Tamil speaker. The judge had simply given insufficient reasons for rejecting the evidence which was before him.

13. Second, the Article 8 analysis was wholly inadequate. The judge's brief consideration lacked any Razgar-style assessment and was inadequate. The evidence established that there was family life between the appellant and her adult children and the judge had simply failed to engage with the arguments which might establish that the refusal was disproportionate. Ms Seehra relied on BRITCITS v SSHD [2017] EWCA Civ 368 at paragraph 59 where Sir Terence Etherton MR said:

> "Second, as is apparent from the Rules and the Guidance, the focus is on whether the care required by the ADR applicant can be reasonably provided and to the required level in their home country. As Mr Sheldon confirmed in his oral submissions, the provision of care in the home country must be reasonable both from the perspective of the provider and the perspective of the applicant, and the standard of such care must be what is required for that particular applicant. It is possible that insufficient attention has been paid in the past to these considerations, which focus on what care is both necessary and reasonable for the applicant to receive in their home country. Those considerations include issues as to the accessibility and geographical location of the provision of care and the standard of care. They are capable of embracing emotional and psychological requirements verified by expert medical evidence. What is reasonable is, of course, to be objectively assessed".

14. Mr Tarlow accepted that the reasoning might have been more fully expressed but submitted that the grounds in essence amount to a disagreement with the decision. The judge was plainly aware of all of the relevant issues, including the health of the appellant and the care available for her and had reached a decision open to him.

Findings and Conclusions

15. This determination would have been less vulnerable to appeal if the judge had set out the evidence more fully and had provided a more detailed analysis of it. Nevertheless, on the evidence before him, I am not persuaded that it is unsustainable.

16. The appellant is an 80 year old woman. The medical report, which is dated less than a month after her husband died, states that her doctor is concerned about her physical and psychological wellbeing. The appellant had been neglecting her medications and not regularly attending clinics. Perhaps this is not surprising in the few weeks after her husband died. It is clear however from the letter that the appellant does have access to medical care both local clinics and hospitals. She takes regular medication for hypertension. However, her kidney function is normal and whilst she suffers from hearing impairment and memory problems they are not such as to impede her ability to speak to her daughter daily online.

17. She clearly has mobility issues. Nevertheless, there are many family members who are able to help her. She has six children, one of whom lives in Colombo. Her son there says that he regrets that he is unable to help his mother because he lives in a small two bedroom flat with his wife and two children. He said that he believes that his mother would not prefer to be looked after by him because she did not approve of his marriage choice and they hardly communicate. His comment that he feels sorry that he could not help his mother does not indicate complete estrangement. She also has four surviving brothers, one of whom lives locally and another in Colombo and two brothers-in-law locally and two sisters-in-law in Colombo. Although there are no details of nieces and nephews it is likely that, with three local brothers/brothers-in-law there are near relatives available nearby. She also has neighbours who have been living next door to her for years.

18. It would appear that the appellant has had difficulty with dishonest servants in the past. However, this is a close family with significant financial resources. The appellant does not argue that she would not be able to pay for care. She says that there are no care homes locally. The judge said that he was not satisfied that sufficient enquiries had been made or evidence provided as to the unavailability of such care in Sri Lanka. This, it seems to me, was a conclusion open to him on the evidence. The witness statements say that the family researched them and “could only see care homes in Colombo” but that is some way from establishing that there is no provision for care of the elderly in northern Sri

Lanka. I entirely accept that it would be the norm for families to provide such care but the evidence before the judge was that there were some family members who lived locally and others who make great efforts to visit her as often as they are able.

19. This is a human rights appeal and not a determination of whether the appellant meets the requirements of the Immigration Rules. Whilst the judge could have explained his reasoning more fully, I am satisfied that his conclusion that the appellant could not meet the requirements of Appendix FM in respect of entry clearance as an adult dependent relative is sustainable. That has to be the starting point for the assessment of the proportionality of this refusal.

20. So far as Article 8 is concerned, any defects in the judge's brief reasoning is not material.

21. I do not doubt that there is family life between the appellant and her children, both in the UK and elsewhere, since the appellant is clearly frail and requires emotional support from her sons and daughters. It is clear that they are in extremely regular contact. The appellant is not financially dependent upon them, since she has resources of her own, but I accept that in her present situation there are more than the normal emotional ties between the appellant and her children.

22. There is no doubt that the appellant herself, with or without financial assistance from her children, is in a position to pay for care in her home town. The fact that she has had problems with servants in the past does not mean that it would not be possible for her to employ someone to look after her. If money is not an issue, and it appears that it is not, physical care can reasonably be provided to the required level. So far as emotional care is concerned, I entirely accept that both the appellant and her children would much prefer to be with each other in the closing years of her life. That is entirely natural. However, the appellant does have some close relatives nearby who could provide companionship. The appellant has five children and three siblings who live abroad but who clearly visit as often as they can. She also has a son in Sri Lanka. Moreover, there are significant considerations set out in Section 117B of the 2002 Act which go against the appellant. She does not speak English and would be a significant burden on the public purse were she to come here.

23. Accordingly, the judge did not materially err in law. His decision stands.

No anonymity direction is made.

Deborah Taylor

Signed Date 30 April 2018
Deputy Upper Tribunal Judge Taylor