Upper Tribunal
Immigration and Asylum Chamber **Appeal Number: OA/06290/2013**

THE IMMIGRATION ACTS

Heard at Field House	**Promulgated on:**
On 21 March 2014	**On 26 March 2014**

Before

Upper Tribunal Judge Kekić

Between

Okyabrina Ivanovna Markova
(anonymity order not made)

Appellant

and

Entry Clearance Officer
Moscow

Respondent

Representation
For the Appellant: Ms V Sharkey, Counsel
For the Respondent: Mr P Deller, Senior Home Office Presenting Officer

Determination and Reasons

Background

1. This appeal comes before me following the grant of permission by First-tier Tribunal Judge Kelly in respect of the determination of First-tier Tribunal

Judge Glossop who dismissed the appeal by way of a determination dated 27 January 2014.

2. The appellant is a citizen of the Russian Federation born on 22 October 1931. She appeals the respondent's decision of 20 December 2012 to refuse to grant her entry clearance as a dependent relative. On review, the Entry Clearance Manager (ECM) accepted that she required "long term care as required under Appendix FM" but was of the view that this care could be provided in Russia where she had some relatives and with the financial assistance of her UK based daughter and son-in-law (the sponsors).

3. The judge found that the appellant did not need constant care and that whatever was required could be obtained in Russia.

4. At the hearing I heard submissions from the parties as to whether or not the judge erred in law. At the conclusion of the proceedings, I concluded that he had, and I now give my reasons for so finding.

Findings and Conclusions

5. The rules require the appellant to show, inter alia, that:
   - as a result of age, illness or disability, she requires long term personal care to perform everyday tasks,
   - she must be unable, even with the practical and financial help of the sponsor, be unable to obtain the required level of care in the country where she is living *because*
     - it is not available *and*
     - there is no person who can reasonably provide it *or*
     - it is not affordable.

6. The ECM in his review accepted that the first requirement had been met. That is plain from his statement of 31 July 2013. It is my view that no further concession is made about the nature of the care that is required. Although it is argued that long term care equates with constant care, that argument is not made out and indeed the ECM's observations on the costs for 8 hour care make it clear that he did not accept the claim for and by the appellant that 24 hour care was required.

7. In his submissions, Mr Deller very fairly acknowledged that the judge's repeated references to a lack of medical evidence in respect of the appellant's numerous conditions was in direct contradiction to the Entry Clearance Manager's acceptance that the medical evidence had confirmed the claimed conditions. Plainly, the judge erred in finding that there was no evidence when not only was it contained in the evidence before him, but it was expressly accepted by the ECM.

8. The judge appears to have accepted the Home Office Presenting Officer's submission, which itself seems to emanate from the ECM's statement, that 6-8 hours of care would be required. However, it is plain that the judge's assessment in this respect is inadequate. Given that the judge does not appear to have taken any of the medical evidence into account, and has not given adequate reasons for why he rejected the evidence of the sponsors as to the nature of care required, his findings on how much care is needed by the appellant are flawed. That assessment can only be undertaken in the context of a consideration of all the evidence and that has not been done in this case. This is a further error of law.

9. It is only once all the evidence has been assessed and a sustainable finding is made in respect of the nature and amount of care that is required, that an assessment can be made of whether it can be provided by a relative in Russia or, if not, of the costs involved to pay for it. The judge found that the sponsor's savings would meet the costs but as his findings on the nature and amount of care required were flawed, it follows that his conclusions on the affordability of the care are unsustainable.

10. The determination is, therefore, set aside in its entirety save as a record of proceedings, and remitted to another First-tier Tribunal Judge for re-hearing afresh. Although I have expressed my view on the ECM's rather clumsily put concession (see paragraph 6 above), I do not seek to tie the hands of the judge who will re-hear this appeal and re-make the decision. It is for that judge to decide the extent of the ECM's concession.

Decision

11. The First-tier Tribunal Judge made errors of law and his decision is set aside. The matter is remitted to the First-tier Tribunal for re-hearing afresh and for the decision to be re-made.

Directions

12. A paginated and indexed bundle of all the documentary evidence relied on by the appellant is to be served on the Tribunal and the Secretary of State no later than five working days prior to the hearing. Statements of evidence from the two sponsors must be included and are to stand as evidence in chief.

Signed:

Dr R Kekić
Judge of the Upper Tribunal

21 March 2014