



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

Appeal Number: OA/21388/2013

THE IMMIGRATION ACTS

Heard at Field House

Decision & Reasons

Promulgated

On 29 September 2015

On 16 October 2015

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

ENTRY CLEARANCE OFFICER, NEW DELHI

Appellant

and

MRS BALJEET KAUR

(ANONYMITY DIRECTION NOT MADE)

Respondent

Representation:

For the Appellant: Ms A Holmes, Senior Home Office Presenting Officer

For the Respondent: Miss D Qureshi, Counsel, instructed by Duncan Lewis Solicitors

DECISION AND REASONS

Introduction

1. This is an appeal by the Appellant against the decision of First-tier Tribunal Judge Oxlade (Judge Oxlade), promulgated on 2 April 2015, in which she allowed the Respondent's appeal. That appeal was against the initial decision of the Entry Clearance Officer, dated 31 October 2013, refusing her entry clearance under Appendix FM to the Immigration Rules, in particular in relation to the Dependent Relative route.

Decision of the First-tier Tribunal

2. Judge Oxlade found the evidence of the Respondent's daughter (the sponsor) to be credible (paragraph 49). This evidence had included an account of the needs of the Respondent in terms of daily assistance, and the importance of family care and emotional support.
3. Judge Oxlade also found the medical report of Dr Singh, a doctor practising in India, to be accurate and reliable (paragraph 53). She was satisfied that the author had known the Respondent for a long period of time. She clearly accepted that the Respondent was, as at the relevant date, suffering from depression. She accepted Dr Singh's view that professional counselling was not readily available in the Punjab, and that the Respondent's family there had been unable (or indeed unwilling) to assist. It was Dr Singh's view, accepted by Judge Oxlade, that he had, "exhausted all reasonable alternatives for [the Respondent] there." (paragraph 52). She accepted Dr Singh's evidence that the Respondent had had difficulties taking sufficient nutrition (paragraph 56).
4. Judge Oxlade went on to correctly identify that the purpose of the Dependent Relative route under Appendix FM was not simply to aid family reunification: it required satisfaction of two limbs (the provisions being E-ECDR.2.4 and 2.5 of Appendix FM): the need to show that applicant required long-term personal care to perform everyday tasks; and that such care cannot reasonably be provided for in the country of origin by way of alternative means (paragraph 54).
5. In seeking to construe the meaning of the first limb referred to above, Judge Oxlade relied on conclusions of Upper Tribunal Judge Grubb in the unreported decision of Osman OA/18244/2012. From this decision she extracted the view that personal care had a broad meaning, and was not limited to intimate care or medical treatment (paragraph 55). In respect of everyday tasks, the Osman decision itself referred to a relevant IDI in which the phrase was given a wide meaning, and included the management of bodily functions, and communication and interaction with others (paragraph 56). Judge Oxlade concluded that the Respondent required long-term personal care with everyday tasks by reason of her depression. Thus, the requirements of E-ECDR.2.4 were met.
6. Turning to the second limb of the substantive requirements of Appendix FM, Judge Oxlade found that, based upon the evidence of Dr Singh, the necessary treatment for the Respondent's depression was not readily

available. The care required by the Respondent would need to be provided by her family because for cultural reasons assistance from outside agencies would be unrealistic or insufficient (paragraph 61). The judge found that none of the Respondent's family in the United Kingdom could be expected to go and live in India (paragraph 62). Thus, E-ECDR.2.5 was also deemed to have been met.

7. In view of her findings, Judge Oxlade concluded that the Respondent satisfied the requirements of Appendix FM and allowed the appeal under the Immigration Rules. The appeal was dismissed under Article 8 outside of the Rules on the basis that there was no family life as between the Respondent and her United Kingdom-based family (paragraph 64).

The Appellant's grounds of appeal

8. There are two grounds of appeal, both narrowly drawn. The first is a challenge to Judge Oxlade's assessment of E-ECDR.2.4 of Appendix FM (the personal care limb), in conjunction with the evidential requirements of paragraph 34 of Appendix FM-SE.
9. The second ground asserts that the judge erred in relying upon an unreported decision of the Upper Tribunal (Osman) in the absence of compliance with paragraph 11 of the Practice Directions.
10. Permission to appeal was granted by First-tier Tribunal Judge Reid on 11 June 2015.

The hearing before me

11. Ms Holmes relied on both grounds. She added that Dr Singh's evidence was inadequate and that Judge Oxlade had erred in relying upon it.
12. Miss Qureshi submitted that the judge had been entitled to rely on Dr Singh's evidence. She had directed herself properly in law. The medical evidence had not been challenged by the Appellant at the hearing before Judge Oxlade. In respect of ground 2, if there was an error it was not material. There was no binding authority to contradict Judge Oxlade's interpretation of the relevant provisions of Appendix FM.

Decision on error of law

13. At the end of the hearing I informed the parties that I found there to be no material errors of law in the decision of Judge Oxlade. My reasons for this conclusion are as follows.
14. Ground 1 relies upon the evidential requirements in paragraph 34 of Appendix FM-SE. These stipulate that evidence relating to the need for long-term personal care with everyday tasks “should” come from a doctor or other health professional. There has never been any challenge to Dr Singh’s status as a doctor, and Judge Oxlade was perfectly entitled to rely upon his evidence. The ground of challenge appears in reality to be an assertion that the medical evidence was simply incapable of supporting the judge’s conclusions: in other words, Judge Oxlade’s findings were perverse. Whilst I appreciate that Dr Singh’s report focused in the main upon the absence of treatment for the Respondent and the importance of the family in providing care, there was evidence contained therein which entitled Judge Oxlade to conclude that the Respondent had neglected to eat properly. It was clearly permissible for the judge to take the view that eating properly (as opposed to the fact of cooking) was a “task” arising in “everyday” life (paragraph 56). There is nothing before me to suggest that a particular number of tasks cannot be performed without care in order for E-ECDR.2.4 to be satisfied.
15. Judge Oxlade directed herself correctly as to the law and reached findings that were open to her.
16. Although not strictly necessary for the purposes of my decision, I would add that in my view it was also open to Judge Oxlade to have regard to the evidence of the Respondent’s daughter as a supplementary source of information capable of informing a conclusion on both E-ECDR.2.4. The opening line of paragraph 34 of Appendix FM-SE states that evidence of a need for personal care to perform everyday tasks “should” emanate from a doctor or other health professional: it does not stipulate that such evidence “must” derive from these sources. I note that the mandatory term “must” is used in other evidential provisions within Appendix FM-SE (see, for example paragraphs A1-2).
17. Turning to ground 2, I find that Judge Oxlade did err in permitting the unreported decision in Osman to be adduced and relied upon in the absence of compliance with paragraph 11 of the Practice Directions. There does not appear to have been proper application by the Respondent’s

representative to have the decision admitted. The Practice Directions cannot be overlooked or ignored.

18. However, the error is not material. The interpretation placed upon the meaning of “personal care” and “everyday tasks” by Judge Oxlade were open to her even in the absence of any reliance on Osman. There is no reported decision on the terminology, and the words are not defined within the Rules themselves. Therefore, absent the procedural error, the outcome of the appeal would have been the same.

19. The judge’s application of E-ECDR.2.5 has not been challenged, and I need say nothing more about it. There has been no cross-appeal in respect of the decision on Article 8 outside of the Rules, and I say nothing more that either.

Anonymity

20. No direction has been sought and none is appropriate in this case.

Decision

The making of the decision of the First-tier Tribunal did not involve the making of an error on a point of law. The Appellant’s appeal is therefore dismissed.

The decision of the First-tier Tribunal stands.

Signed

Date: 15 October 2015

H B Norton-Taylor

Deputy Judge of the Upper Tribunal

TO THE APPELLANT **FEE AWARD**

No fee award was made by the First-tier Tribunal and I maintain that decision.

Signed

Date: 15 October 2015

Judge H B Norton-Taylor

Deputy Judge of the Upper Tribunal