



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

Appeal Number: HU/12065/2015

THE IMMIGRATION ACTS

Heard at Field House

On 8 November 2017

**Decision & Reasons
Promulgated**

On 23 November 2017

Before

DEPUTY UPPER TRIBUNAL JUDGE NORTON-TAYLOR

Between

**MRS AMMANKILI SELVAVELAYUTHAM
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

ENTRY CLEARANCE OFFICER, CHENNAI

Respondent

Representation:

For the Appellant: Ms B Jones, Counsel, instructed by A & P Solicitors
For the Respondent: Mr D Clarke, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is a challenge by the Appellant against the decision of First-tier Tribunal Judge Pacey (the judge), promulgated on 27 January 2017, in which she dismissed the Appellant's appeal against the Respondent's decision of 3 November 2015, refusing her human rights claim (made by way of an entry clearance application for leave to enter the United Kingdom as an adult dependent relative).

The judge's decision

2. The judge refused to admit a letter purporting to come from the Appellant's carer in India on the basis that this document did not comply with Practice Directions and did not contain a date, address or signature. The judge appears to note the importance of meeting the Immigration Rules as part and parcel of an overall Article 8 proportionality assessment. It is noted that the Appellant had lived away from her children for a number of years. In all the circumstances the judge concluded that there was no family life as between the Appellant and any of her children, including the United Kingdom-based Sponsor.
3. Notwithstanding this, the judge goes on to consider the other stages of the Razgar methodology. At paragraph 37 she appears to accept that the Appellant had certain medical conditions (based upon a letter from a consultant psychiatrist referred to briefly at paragraph 10). At paragraphs 39 to 41 the judge finds that the Appellant did not suffer from significant functional limitations, based in large part on what she said in an interview with the Respondent. Paragraph 40 in particular appears to suggest that the Appellant might not have been suffering from geriatric depression. Paragraph 41 states that the Appellant was not suffering from any cognitive impairment such that she had no insight into her health problems.
4. The judge goes on to consider the situation of the Appellant's other children who live in various places around the world and concluded that the Appellant could potentially reside with one or more of them, or that her children could go and live with her in India. The judge concludes that an Article 8 claim is not based upon the convenience of an Appellant's children.
5. At paragraph 51 the judge states that the letter from the carer contained in the Appellant's bundle was not translated and therefore could not be taken into account.

The grounds of appeal and grant of permission

6. A number of challenges are made to the judge's approach and findings. In summary, these relate to the letter from the carer, the judge's approach to the medical evidence, certain alleged factual errors, and whether the Appellant was able to meet the requirements of the Rules (specifically Appendix FM).
7. Permission to appeal was granted by First-tier Tribunal Judge Black on 5 September 2017.

The hearing before me

8. Ms Jones submitted that the judge had been wrong to refuse to admit the letter from the carer. A translation of the letter contained in the bundle was provided at the hearing but the judge had refused even to read it. No

reasons for this refusal had been stated. It was submitted that this was material because the letter contained important information about the care for the Appellant in India. The Brit Cits case has now been decided by the Court of Appeal ([2017] EWCA Civ 368) and I was referred to paragraph 76 of its judgment. She submitted that the medical letter had not been adequately addressed by the judge and there appeared to be an inconsistency between what she says in paragraphs 37 and 40. The medical letter was sufficient to meet the requirements of Appendix FM-SE.

9. Mr Clarke submitted that the judge was entitled not to have admitted the letter, but he accepted that the judge had not dealt with the sponsor's evidence set out in paragraph 14, nor had she dealt with the requirements of E-ECDR.2.5. He also accepted that the findings relating to the psychiatrist's letter were somewhat unclear. Having said that, Mr Clarke submitted that the medical evidence in this case was thin and that the judge was entitled to rely on the interview record. The face of the decision appeared to show that the Appellant's case was argued only on the basis that she should succeed outside the context of Immigration Rules. Mr Clarke suggested that even if compliance with the Rules had been argued the judge clearly found that the various provisions were not in fact met. The judge was entitled to find that there was no family life.
10. In reply Ms Jones emphasised the point acknowledged by Mr Clarke, namely that the judge had not dealt with the sponsor's evidence. She submitted that cumulatively there were enough errors for the decision to be set aside, particularly when it was viewed in the context of the Court of Appeal's decision in Brit Cits.

Decision on error of law

11. Having given this case careful consideration I conclude that there are material errors of law such that the decision of the First-tier Tribunal should be set aside. My reasons for this are as follows.
12. In my view there is an error in respect of the refusal to admit the letter from the carer. The original, (which is in Tamil) is contained in the Appellant's bundle. Without a translation of course this document would not have been considered at all. However, a translation of the letter was provided at the hearing. Therefore the objection that the letter in the bundle was untranslated fell away. The judge states that the original Tamil letter was not in line with Practice Directions. Having regard to the relevant Practice Directions, in particular paragraphs 8.2(b) and 8.3, the production of a translation, (albeit late in the day), meant that the original letter became compliant. There was nothing in the Practice Directions relating to addresses, dates and the name of the author. These matters of course would go to the question of *weight*, but did not necessarily justify a refusal to admit into evidence at all. On the face of the decision the judge has failed to provide adequate reasons for refusing to admit the letter and its translation. This letter may have provided material evidence in that its contents apparently went to the question of whether the Appellant was

receiving or was able to receive a reasonable level of care appropriate to her needs in India.

13. Even if the judge had been entitled to refuse to admit the letter, the substance of that letter (i.e. the nature of the care and the Appellant's attitude towards it) was given in oral evidence by the sponsor (paragraph 14). As Mr Clarke acknowledged, the judge has failed to grapple with this potentially significant oral evidence. There was no finding as to the credibility of the sponsor on this particular issue and it cannot be assumed that he was deemed untruthful. In my view there is an error here, and a material one at that.
14. Whilst the judge mentions the letter from the consultant psychiatrist at paragraph 10, when it comes to consideration of the evidence and findings thereon there is a real tension as to what is said in paragraphs 37 and 40. In the former the judge appears to be accepting that the Appellant had certain medical conditions. If this statement was based upon the psychiatrist's letter, those conditions would include geriatric depression and memory loss. However, at paragraph 40, and based upon what the Appellant herself said at her interview, the judge appears not to accept that she suffered from geriatric depression. Even reading these two paragraphs generously and in light of the decision as a whole, I conclude that there is an apparent contradiction here. It is material because it goes to the Appellant's particular circumstances, the type of care required, and the issue of who could reasonably provide that care.
15. The errors that I have identified above all involve factual issues which in turn go to an assessment of the Appellant's Article 8 claim both within the Rules or, without. It is unclear as to whether any specific concession was made by the Appellant's representative at the hearing on the ability to comply with the Rules. However, there still needed to be a clear and thorough assessment of the facts before proper conclusions could be drawn on Article 8 as a whole.
16. As to the situation relating to the Appellant's other children around the world, in a sense that is immaterial in that the focus of the Rules and Article 8 claim at large was on either India or the United Kingdom. That was the basis on which the appeal fell to be considered.
17. Finally, I note that whilst the decision of the Court of Appeal in the Brit Cits case post-dates the judge's decision it nonetheless represents a statement of the law as it was all along. The comments in paragraph 76 of the judgment make it clear that all the circumstances of an appellant must be taken into account, and an assessment made of whether available care is reasonable for the individual to receive psychological and emotional needs of elderly parents can be relevant to this assessment. As a result of the errors I have highlighted above, this assessment has not been adequately undertaken in the present case.

Disposal

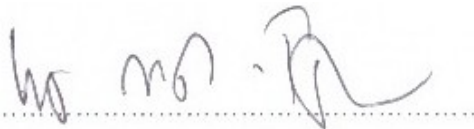
18. Both representatives were agreed that if I were to find that there were material errors of law this appeal should be remitted to the First-tier Tribunal on the basis that there are a number of factual issues which require determination. I agree with that approach and remit this case.
19. It will be heard afresh with no preserved findings of fact. It will be important for the Appellant to adduce the best evidence possible as to not only her conditions, but also her functionality (which is not the same thing), the type of care reasonably required, the type of care in fact being received, whether alternative care could be provided within India (even at added cost to the family), and whether there are any other particular circumstances which may be relevant to the overall assessment.

Notice of Decision

The decision of the First-tier Tribunal contains material errors of law. I set it aside.

I remit this appeal to the First-tier Tribunal for a complete re-hearing.

No anonymity direction is made.



Signed

Date: 22 November 2017

Deputy Upper Tribunal Judge Norton-Taylor