



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

Appeal Number: IA350292015

THE IMMIGRATION ACTS

**Heard at Field House
On 2nd May 2017**

**Decision & Reasons
Promulgated
On 23rd May 2017**

Before

UPPER TRIBUNAL JUDGE KING TD

Between

MR MUHAMMAD UMAR

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Z Nasim, (Counsel) instructed by Legal rights Partnership

For the Respondent: Mr P Nath (Home Office Presenting Officer)

DECISION AND REASONS

1. The appellant is a citizen of Pakistan born on 8th September 1991.

2. He arrived in the United Kingdom in December 2010 as a student with leave until 31st May 2014. In September 2013 he made an application for a derivative residence card under the Immigration (EEA) Regulations 2006 as the primary carer of his paternal grandmother, [AB]. That application was refused in February 2014. On 23rd May 2014 he submitted a fresh application, this also was refused on 18th August 2014. Following a judicial review challenge, reconsideration of the decision was made, which resulted in the decision of 3rd December 2015 under challenge refusing to grant the application.
3. Regulation 15A(4A) of the 2006 Regulations requires three things to be established, namely:-
 - (a) that the appellant is the primary carer of a British citizen;
 - (b) that the relevant British citizen is residing in the United Kingdom; and
 - (c) the relevant British citizen would be unable to reside in the United Kingdom or in another EEA state if the appellant were required to leave.
4. In the decision it was not accepted by the respondent that the appellant was related to [AB] as claimed nor was it accepted that she was wholly dependent upon him for her care. Further it was considered that, as a British citizen, she would be entitled through the NHS or social services to care should it be needed and that preference and convenience were not sufficient reasons for the application to succeed. The appellant was held to have failed to demonstrate that [AB] would be unable to reside in the UK or in another EEA state if he were required to leave.
5. An appeal was lodged against that decision, which appeal came before First-tier Tribunal Judge Lloyd on 14th September 2016. In essence the Judge accepted that the appellant was indeed related to his grandmother and that she required a degree of personal care because of her medical condition. The Judge was not satisfied, however, that in the absence of the appellant, further care could not be available to her. Further that there was no indication that his absence would involve her leaving the United Kingdom to return to Pakistan to be with him.
6. Challenge is made to the decision, it being said that the Judge had failed to make proper findings as to the nature of the disabilities experienced by [AB] and of her dependence upon the appellant. It was said that the Judge had failed to give adequate consideration to the evidence of the appellant and particularly the evidence of [AB] herself.
7. There is a statement from the appellant in the hearing bundle dated 31st August 2016 and also statements from his uncle Mr [S] and from [AB] herself.

8. The family situation would seem to be of considerable complexity. In particular the wider family consists of three paternal uncles and their families seemingly not in good relationships one with the other on account of land disputes between them in Pakistan.
9. [AB] lived with her husband in the United Kingdom until he died in 2007. Thereafter Uncle [M] took responsibility for looking after [AB] with his family in the United Kingdom. This was for the period 2008 to 2012 when he left the United Kingdom and returned overseas.
10. The responsibility for looking after [AB] then fell upon Mr [S] and [AB] has since 2012 resided with him and his family in his house. An added complication to the situation would seem to be that Mr [S] is in full-time employment and therefore cannot afford the time, except in the evenings to be with his mother. Mr [S]'s wife and children want little to do with his mother on account of the interfamily feud and thus it was that the appellant was asked to come and look after his grandmother, living with her in one room in the house of his uncle.
11. In his statement the appellant sets out the many problems which his grandmother has in terms of her health. Such include depressive symptoms since the death of her husband; some cognitive impairment; limited mobility, poor eyesight. He indicates that she needs constant support. Although she can wash and bathe herself she needs assistance to get to the toilet and to the bathroom. She is often very confused and lost and needs a lot of care and support. He helps her with her medication and takes her to appointments with her general practitioner and to hospital. He prepares her meals and generally looks after her clothing and her general health. Significantly she does not speak English. She is very fussy about her habits and argumentative, on occasions becoming very angry as to her circumstances.
12. In terms of her going into a nursing home, she does not want that. It is the view of the appellant and of [AB] herself that her quality of life would disappear very quickly particularly as she would have little human contact or conversation.
13. Mr [S] in his statement reaffirms the position that his wife and children continue to shun his mother and will not engage with her to do anything at all. It is deeply upsetting for him, she depending almost entirely upon the good offices of the appellant for everything. He speaks of her suffering hypertension, angina, pulmonary disease and depression and other ailments. It is important she has somebody that she can talk to otherwise she would be very isolated and given her mental health would rapidly deteriorate. Often she is dazed and confused and often visits the memory clinics.
14. At paragraph 14 he gives an indication that he is willing and able to buy or rent a property for his mother where she can live with the appellant, but

he cannot do this until the situation with him and her has been resolved. He does not consider that any other assistance would be adequate for her needs.

15. Finally there is a statement from [AB] herself. She is 83 years of age and speaks of the appellant having been her carer for approximately three and a half years. She speaks to the fact of her illnesses and frailty and health issues. She feels very keenly that she is a burden on people and that causes her to be depressed and anxious and worried. She expresses the view in paragraph 9 of her statement that she cannot go to Pakistan but in the absence of support from her grandson she fears that she will have no quality of life at all. She does not want to go to a nursing home because she cannot speak any English. She fears the isolation that that would bring upon her.
16. In terms of medical evidence there is a report from the general practitioner dated 31st August 2016 setting out the various medical conditions that [AB] suffers from, citing particularly breathlessness, poor mobility and low mood. She is unable to walk more than a few yards because of back pain and spends much time in a wheelchair. In terms of a nursing home the comment made in the report is "I understand she is not keen on moving to a nursing home because she is being well cared for by Umar, both of whom are living in her son's home. Culturally, many of my patients are very happy to care for their elderly relatives at home".
17. There is a further report by Dr Bindra, the GP, of 28th April 2014 speaking of the fact that the appellant is her main carer and without his help she will need social services' help to maintain her medical health.
18. The first challenge that is made to the Judge's decision is in essence that he has not made a proper and balanced assessment as to the dependency of [AB] upon the appellant or attempted to make findings as to the exact level of care which she requires to manage her conditions. There is some merit in that criticism because it is apparent that the Judge failed to realise from the evidence, particularly of the appellant and his uncle, that the appellant had ceased to study in the United Kingdom but had devoted himself full-time to her care for some four years. The fundamental difficulty, however, in this case, as was highlighted by the Judge in the determination, is to determine what level of care would be available to [AB] were the appellant not to be looking after her. For four years her elder son had been looking after her and for four years the appellant.
19. Mr [S] was working and one issue would clearly be the extent to which he was able to finance any care that she might require. An apparent contradiction was noted in paragraph 16 of the determination, when Mr [S] said that he could not afford to pay for any care, whereas in his statement and at the hearing he referred to being willing to buy or rent another house for [AB] and the appellant in which to live. He sought to clarify the contradiction by saying that he has incurred much expense in pursuing the

status of the appellant. That begs the question of the availability of further financial support.

20. Mr [S] was asked about what alternative care or support had been investigated. There was little mention of anybody having approached social services for an assessment of her needs or for assistance. Mr [S] talked about an approach made by social services with a visit a year ago to carry out an assessment but there was nothing in writing from social services to confirm that and the Judge did not find it credible that such an event would not have some documentation attached to it. As a further complication to care, Mr [S] indicated that he would not permit carers to come and assist in his house. Clearly that did not help clarify what care could be provided if requested.
21. Further criticism was made of the Judge that he had failed to take into account the concerns of [AB] to going into a care home. It was contended that it was not simply that she had expressed a preference not to be moved into a care home but that she had given clear reasons why to do so would be utterly detrimental to her health. The difficulty again with that submission is that no investigations have been made as to possible care homes and to the care that they could or could not provide. It is understandable that, if [AB] went into a nursing home or care home and was not able to communicate with anybody, such would be a very isolating event. It has not been established that there are not places that would have people speaking her language and being able to communicate with her as she requires. There has been little assessment professionally as to her needs and whether those can be met otherwise than by the appellant. The burden is and remains upon the appellant to establish that which is contended. It seems to me, as a matter of commonsense, that if it is contended that no proper or adequate alternative care can be provided that there is some proper substance for that in a report by social services or at least by diligent enquiry.
22. The focus of the appeal, and indeed the focus of challenge, is on the basis that without the appellant the health of [AB] will continue to deteriorate and in effect her personal identity and integrity will be damaged and compromised. Clearly these are important matters to be borne in mind, particularly to determine whether there are compelling circumstances which should be exercised in her favour by permitting the appellant to remain. However, the requirement that requires to be satisfied under the Regulations, as identified by the Judge, is whether in the absence of the appellant [AB] will be forced to leave the United Kingdom and return to Pakistan. On that matter there is very little evidence. She herself in her statement says that she cannot return to Pakistan and that no case has been advanced in terms that she would of necessity require to be returned. There was some suggestion at one point by Mr Nasim that the purchase of the property spoken about by the uncle was in terms of property in Pakistan. From my point of view I can find no indication that that is so, rather the context being put that once the appellant's status in

the United Kingdom was clarified then such a purchase might be made. There is a paucity of any evidence seeking to link the departure of the appellant with the necessity that [AB] also would have to leave the United Kingdom.

23. As the Judge indicated, [AB] as a British citizen would be entitled to social support. The evidence is far from conclusive that such support would not be unavailable or ineffective.
24. It seems to me and I so find, therefore, that although there are a number of shortcomings in the overall analysis of the evidence by the Judge, such makes no material difference to the resolution of the fundamental question as to what if any support would be available to [AB] were the appellant to be removed. It also begs the question as to whether [AB] would in any event be forced to leave the United Kingdom as a consequence of the appellant's removal.
25. Overall therefore I find that the decision of the Immigration Judge was one that could properly be made, notwithstanding the findings that were made in favour of the appellant.
26. In those situations the appeal of the appellant before the Upper Tribunal is dismissed such that the original decision of the First-tier Tribunal stands, namely that the appellant's appeal is dismissed so far as the operation of the EEA Regulations 2006 are concerned.

No anonymity direction is made.

Signed



Date 19 May 2017

Upper Tribunal Judge Mr P D King TD