Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: HU/02503/2021
UI-2021-000807

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 07 June 2022	**On 10 June 2022**

Before

UPPER TRIBUNAL JUDGE CANAVAN

Between

DILBAG SINGH

Appellant

and

ENTRY CLEARANCE OFFICER

Respondent

Representation:
For the appellant: Ms G. Brown, instructed by OBT Legal
For the respondent: Mr E. Tufan, Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant appealed the respondent's decision to refuse a human rights claim in the context of an application for entry clearance as an Adult Dependent Relative.

2. First-tier Tribunal Judge Athwal ('the judge') dismissed the appeal in a decision promulgated on 03 September 2021.

3. The appellant appeals the First-tier Tribunal decision on the following grounds:

   (i) In referring to the evidence from Dr Bhatia of the Verma Clinic as 'Dr Verma' the judge erred in relation to a material fact. This supported the other grounds of appeal arguing that the judge failed to give adequate consideration to the evidence.

   (ii) It was not open to the judge to find that Dr Singh's evidence (the family GP) was not independent. First, the respondent had not questioned the impartiality of this evidence nor was it raised as a concern by the judge at the hearing. Second, the judge failed to take into account material aspects of Dr Singh's evidence including his statement that he had not accepted anything suggested by others without forming his own 'independent view' on the matter. Third, the finding was outside a range of reasonable responses to the evidence given that Dr Singh and Dr Bhatia are both qualified medical professionals who are required to adhere to a code of medical ethics.

   (iii) It was irrational for the judge to find that the appellant did not meet the requirement to need long-term personal care to perform everyday tasks when she accepted that the evidence from several sources showed that the appellant needed assistance with eating, washing, and taking medication.

   (iv) The judge failed to have adequate regard to relevant evidence relating to the availability of alternative care in the local area.

   (v) In assessing what weight to place on the public interest in the overall assessment under Article 8, and in finding that the sponsor had a relatively low income and was unlikely to be able to afford private medical care, the judge failed to take into account relevant evidence relating to the sponsor's savings, monthly outgoings, disposable income, and the support of other family members.

Decision and reasons

Error of law

4. The judge wrote a well-structured and detailed decision in which she considered most of the evidence produced within the context of the relevant legal framework. However, having considered the grounds of appeal and the submissions made by the parties at the hearing, I conclude that the second and third grounds disclose material errors of law.

5. The judge referred to the evidence from Dr Singh and Dr Bhatia (although she incorrectly referred to this evidence as from Dr Verma). However, she appeared to reject the evidence of Dr Singh for the following reasons:

> ’33. I have considered whether Dr Singh’s letter falls (sic) within the ambit of being independent medical evidence pursuant to Appendix FM-SE. Dr Singh ahs been the family GP for 15 years and by his own admission is willing to act beyond his role to assist the Appellant and his family. I therefore do not accept that it is independent medical evidence.’

6. The judge went on to make the following ‘clear finding’:

> ’36. … The only clear finding I can draw from the medical evidence is that the Appellant’s dementia is progressively worsening and he requires assistance to remind him to take medication, eat and wash.’

7. Despite having found that the evidence showed that, as a result of the appellant’s age and medical conditions, he required assistance with tasks that could not rationally be described as anything other than essential ‘everyday tasks’, and having apparently rejected Dr Singh as an independent medical expert, the judge went on to conclude:

> ’37. In the absence of a more detailed, independent assessment of the Appellant’s needs I can not (sic) be satisfied that he has reached the point where he can be said to need long-term personal care to perform everyday tasks as E-ECDR.2.4 requires.’

8. First, having found that the medical evidence showed that the appellant’s progressively worsening condition required assistance to perform what were clearly essential everyday tasks it is difficult to see how the judge could have rationally concluded in the very next breath that the appellant had failed to produce sufficient evidence to meet the requirements of paragraph E-ECDR.2.4.

9. Second, I find that there is some force in the argument that the judge failed to give adequate reasons to explain why she considered that Dr Singh was not an independent medical expert for the purpose of paragraph 34 of Appendix FM-SE.

10. There was no dispute that Dr Singh is a qualified doctor. His outline of the appellant’s medical history was not disputed. The mere fact that he had been the appellant’s GP for many years in itself does not suggest a lack of independence. Many people have continuity of care from local family doctors over a period of years. Such continuity placed Dr Singh in a good position to assess the appellant’s care and treatment needs. Nor does the fact that the GP had gone beyond his normal routine to arrange extra visits to the appellant at home or to support his application to join his family in the UK suggest any particular bias given that his clinical opinion was that the care that the appellant requires to live with dementia should come from family members who he is familiar with. None of these actions go beyond what one might reasonably expect of a local doctor practicing in a caring profession who wants to support a long standing patient with deteriorating health. Lastly, the judge failed to take into account the express declaration made by Dr Singh at the end of his first report dated 12 December 2020 that: ‘I have not, without forming an independent view,

included or excluded anything which has been suggested by others (i.e. Mr Singh or his family)'. By this statement Dr Singh made clear that his evidence was prepared with his independent professional duties in mind.

11. The judge also rejected Dr Bhatia's professional opinion as lacking independence simply because the letter had been produced at the request of the family [34]. Given that the immigration rules require specified evidence from medical practitioners to support an application, it is difficult to see how any evidence could be produced without a request from the family. In approaching Dr Bhatia to assess the appellant the family was obtaining a second opinion in addition to the appellant's regular family doctor. The judge's reasons for finding the evidence lacking in independence were inadequate and unsustainable.

12. If a judge seeks to impugn the reputation of a qualified medical practitioner and makes a suggestion, as in this case, that they are not independent i.e. an allegation of bias, it should be supported by cogent reasons and by the evidence. Neither was apparent in the bare assertions made at [33] and [34] of the decision, nor was the point apparently raised at the hearing for those representing the appellant to address. For these reasons, I find that the judge's findings relating to paragraph E-ECDR.2.4 involved the making of an error of law.

13. The judge's failure to give adequate weight to Dr Singh's and Dr Bhatia's qualified medical opinions impacted on her subsequent findings relating to paragraph E-ECDR.2.5 of the immigration rules relating to whether the required treatment or care was reasonably available in India. The judge had summarised Dr Singh's clinical opinion that the required care for the appellant's deteriorating condition included (i) the familiarity of family members; and (ii) a stable regime of care to minimise confusion. Dr Bhatia had also recommended that the appellant needed continuity of care from family members to prevent his dementia from worsening. Both doctors also mentioned that, to their knowledge, there were no suitable care facilities in the area.

14. At [39] the judge considered Dr Singh's evidence relating to the availability of care facilities in the area (although she incorrectly referred to him as 'Mr Singh'). At [40] she also noted what Dr Bhatia said about the availability of local care facilities (although she incorrectly referred to him as 'Dr Verma'). The incorrect reference to their correct names and titles indicates a lack of care and somewhat dismissive approach to the evidence of qualified medical professionals. As local doctors it is reasonable to infer that they would have knowledge of what care facilities might be available for their patients. Although both doctors considered that there were no appropriate care facilities for dementia in the area, they nevertheless cautioned against the appellant being cared for in a residential facility due to his high vulnerability to Covid-19.

15. Before the judge was evidence from two other people with official positions in the local area who, consistent with the two doctors, also explained that

there was a lack of adequate care facilities in the local area. The sponsor and her brother also explained that they had made enquiries and could find no suitable facilities to care for their father. The judge rejected this evidence on the basis that they had not provided evidence directly from the organisations they had contacted to say that the necessary care would not be available. The judge concluded that the appellant had 'failed to establish the exact nature of the care and treatment that he currently requires and whether that required level of care is available in India' [45].

16. In fact, Dr Singh's evidence was clear as to the nature of the care required, as was Dr Bhatia's. Nowhere in her findings relating to the availability of care did the judge consider the recommendations that they made about the best care for the appellant's dementia being a stable routine with close family members. Even a lay person should be aware that dementia is a long term degenerative disease that causes progressive loss of cognition. It can cause memory loss, confusion, and associated anxiety caused by such symptoms. One does not need to be medically qualified to understand why both medical professionals recommended the staibility of a family routine, which the appellant previously had the benefit of when he was cared for by his wife. Despite consistent evidence from at least four or five sources to say that adequate specialist dementia care was not available in the local area, the judge appeared to require an even higher level of evidence. In doing so she seemed to require a level of certainty and applied too high a standard of proof in relation to immigration rules that are already stringent. For the reasons given above, I also conclude that the First-tier Tribunal decision involved the making of an error of law in the findings relating to paragraph E-ECDR.2.5 of Appendix FM.

17. I conclude that the First-tier Tribunal decision involved the making of an error on a point of law. The decision is set aside and will be remade by the Upper Tribunal. I heard further submissions from both parties before making a decision.

Remaking

18. In *BRITCITS v SSHD* [2017] EWCA Civ 368; [2017] WLR(D) 378 the Court of Appeal found that the immigration rules relating to the admission of Adult Dependent Relatives were lawful and underpinned by a rational policy objective. The Court concluded that the rules did not exclude nearly all applicant's but were capable of being 'of embracing the psychological and emotional needs of elderly parents'. The rules also provided for entry when the care required for the particular applicant could not reasonably be provided in their country of origin.

19. Although the respondent's decision letter dated 18 March 2021 stated that the appellant did not meet the eligibility requirements of paragraphs E-ECDR.2.1 to E-ECDR.2.5 of Appendix FM, in fact, the application was only refused with reference to paragraphs E-ECDR.2.4 (requires long term

personal care to perform everyday tasks) and E-ECDR.2.5 (unable to obtain the required level of care in county where living).

20. The applicant is an 81 year old widower who now lives alone in the family home in a rural area of India. The sponsor is his adult daughter. She is a British citizen. The appellant therefore meets the requirements of paragraphs E-ECDR.2.1-2.3 of Appendix FM.

21. The medical evidence of Dr Singh and Dr Bhatia show that the appellant is suffering from a range of age related health issues. It is not disputed that he suffers from the physical ailments of hypertension, diabetes, and osteoarthritis. Nor is it disputed that he has been diagnosed as suffering from depression and was also diagnosed with dementia in early 2020. In Dr Singh's first report dated 12 December 2020 he outlined what treatment the appellant was receiving for each condition. He also outlined the family history. He was aware that the appellant's wife had been his carer. She had attended each appointment with him. She was responsible for ensuring that the appellant took his medication, would attend to his personal care, including washing, and would ensure that he was fed.

22. Mrs Manjit Kaur Johal is the appellant's daughter. She provided a detailed witness statement and gave evidence at the First-tier Tribunal hearing. In her statement she explains how her mother was able to provide a strict routine for her father. She also provided the details of that regime. Sadly, her mother died very suddenly and unexpectedly on 16 November 2020. She described how her father's health, which had already been deteriorating, took a turn for the worse. He was distressed and disorientated by the loss of his wife.

23. This evidence is supported by Dr Singh's observations about the 'significant decline' in the appellant's health since his wife died. When he assessed the appellant on 07 December 2020 he noted that the appellant was feeling particularly low and isolated since his wife's death. He told Dr Singh that he was not motivated to eat. Dr Singh had noticed 'excessive weight loss' in the weeks after his wife died. The appellant's son reported that his father's dementia had worsened. Dr Singh testified that he had also seen a decline in his condition in the weeks preceding the report. He made the following recommendations regarding the required level of care:

> 'The conditions Mr Singh suffers from cannot be cured; he requires continuous care due to the impairment of his thinking. As Mr Singh suffers from depression, his care must be very tailored and sensitive to his needs, his late wife ensure she remained in close contact with myself when he was having low periods to ensure he was getting the care and attention he required. Since the passing of his wife, Mr Singh has displayed worrying symptoms if he is left alone and unattended. If Mr Singh's symptoms are not improving he may wish to consider therapy by way of talking therapy or Cognitive Behavioral Therapy as a way of managing his mental health.
>
> With the above in mind it is my view that Mr Singh should be around familiar faces and those he can trust, he will struggle with unfamiliar faces and his health will deteriorate further. His care needs will best be met by his family.

> Being an elderly gentleman above the age of 75 and in light of the current health conditions, in particular being diabetic, places Mr Singh under the high risk and vulnerable category in India should he contract Covid 19. In light of the rapid increase in cases in India I strongly suggest that Mr Singh not be placed in an adult care facility.'

24. Dr Bhatia of the Verma Clinic was asked to assess the appellant. In a letter dated 08 January 2021 he said:

> 'Currently Mr Singh is being cared for by his eldest daughter who arrived in India on Friday 27th November as soon as she was able to get the travel documentions due to restrictions from COVID-19. She has extended her stay in India due to the continuing deterioration of her father twice now. When his daughter goes back to UK, then another member of the family who is Mr Singh's nephew, Gurwinder Pal, will be providing support of taking medication on time and providing Mr Singh meals. Mr Singh ahs been classified as high risk for coronavirus and it is dangerous to his health being cared for by somebody who is not living with him and mixing in different households. Gurwinder Pal has children in school and works on a farm so is exposed to the virus. Not only this Mr Singh has shown signs of going deeper into depression which I fear will further worsen the dementia symptoms. It is a very sensitive time for Mr Singh and he requires around the clock care by somebody who he knows and trusts, in my opinion this is his own children. From the circumstances mentioned before, such as Mr Singhs (sic) dementia and depression for him to manage his symptoms he requires care around the clock and not just taking medication. Mr Singh has mentioned that he forgets to eat on time, forgets to shower sometimes and even has forgotten to tie his turban since his wife has died. These are signals of deteriorating conditions.
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> If this continues like the same, he can die because of improper medication and care. He needs someone urgently to take care of him for his medication and daily needs. It is recommended according to his present health condition that he must be kept with his immediate family members (such as his daughters or son) who can closely take care of him. Mr Singhs (sic) family have discussed with me the care facilities in our area and I can confirm there are no adult care facilities which can care for Mr Singh as he requires. The quality of adult care in the Adampur and Jalandhar area is very poor. I have had a number of 70 plus aged patients who have died in care homes because they did not provide care for the patient in the right routine and manner.'

25. Dr Singh provided an update in a further letter dated 16 March 2021. He stated that the appellant required a 'specific and strict' diet that his wife used to take care of. In the past the appellant had forgotten to take his medication, but his wife would ensure that he took it. The appellant was prescribed additional medication after being diagnosed with dementia. In recent weeks he had forgotten to take it, until his son arrived from the UK to provide temporary care. Dr Singh went on to make the following recommendations:

> 'I would like to add that in all the years I have treated Mr Singh, I have seen him at an all time low over the past 4 months. He was very dependent on his wife to manage his medical needs and many of his day to day tasks prior to now, as she was his primary care giver. I have seen a significant decline in his physical and mental health and wellbeing since she has passed. All three of his children had to come to India during the pandemic in order to support his needs at short notice days after her passing as he was in a very low place.

> All of Mr Singh's conditions are unfortunately those which are not curable but can be managed with continued diligence and care and ensuring his medication is taken on time every day. Mr Singh does not have the capacity to do this himself and with no immediate family in the country the support available to him around the clock is very limited. At this sensitive time, his care must be tailored to his needs. There have been numerous cases, including patients of my own, who have unfortunately died due to lack of care for mental health patients and the elderly in our area.'

26. Dr Singh provided another update on 26 August 2021. In that letter he stated that the appellant's mental health continued to decline. In his opinion this was because he did not have consistent care from someone who he knows and trusts. There was no routine in the care he was currently being provided with. The appellant was unable to attend the surgery because he became confused. On an exceptional basis Dr Singh was trying to visit him at home but this could only be done on a short term basis. He was in contact with the appellant's daughter in the UK as well as his nephew (Gurwinder Pal Singh). On 22 August 2021 his nephew reported that the appellant suffered from a severe anxiety attack in which he was breathing heavily, shaking, sweating and calling out for his wife and children. Despite the best efforts of those who were trying to support the appellant, in Dr Singh's opinion, there was 'a lack of diligence and care in the way his condition is being treated'. He repeated that the appellant required 'consistency and familiarity' to manage his physical and mental well-being. He continued to recommend that this was best done by the appellant's close family members.

27. The First-tier Tribunal judge was satisfied that the evidence showed that the appellant required assistance to remind him to take medication, to eat, and to wash. I have found that such essential tasks could not be described as anything other than 'everyday tasks' for the purpose of the immigration rules. The appellant suffers from a range of age related and degenerative conditions for which there is no cure. The evidence shows that his wife was able to manage his care until her death in November 2020. Since then, the appellant's physical and mental health conditions have 'significantly deteriorated' despite the best efforts of his children to arrange some assistance by way of a cleaner visiting the house once a day and what assistance his nephew can find time to provide in between full time work and his own family commitments.

28. The evidence shows that Mr Gurwinder Pal Singh was able to bridge the immediate gap at a time of crisis during the depths of the pandemic. At the time his own parents were stranded in the USA, but they have now returned to India. There is evidence from Dr Singh to show that the nephew's parents also suffering from serious health conditions that are likely to require high levels of care. His mother suffers from fibromyalgia and his father from Parkinson's disease. He is married with children and has responsibilities towards his immediate family. The assistance he is now able to provide is sporadic and uncertain.

29. An up to date statement from the appellant's daughter describes the efforts of various members of the family to take time off work to travel to India to care for the appellant for a couple of weeks at a time. The picture painted by this evidence is of a family who are struggling to provide the care that the appellant needs from a distance. The appellant's daughter described telephoning her father every few hours. However, they have also had problems with him forgetting to charge his phone and have had to try to make arrangements for someone to also ensure that this is done. The uncertainty of who might be able to take time off to shuttle to India to support the appellant is likely to be putting a strain on all members of the appellant's immediate family. The current arrangements are fire-fighting in the absence of any adequate care being available in the local area.

30. I am satisfied that the evidence shows on the balance of probabilities that the appellant requires long term personal care to perform everyday tasks and therefore meets the requirements of paragraph E-ECDR.2.4 of Appendix FM. The progression of the appellant's dementia symptoms and increased depression, alongside difficult physical symptoms, has left him unable to care for himself. He needs assistance to eat, to wash, and to take medication. The care he is currently provided with is the best the family can arrange from afar, but is peripatetic and inadequate according to the medical professionals involved in his care. There are reports of the appellant becoming lost outside the house. He is not being provided with round the clock or consistent care.

31. Whilst Dr Singh has attempted to step in to support the appellant he makes clear that this can only be a temporary arrangement because he cannot take the additional time out of his practice on a long term basis. The care provided by the nephew on an interim basis following the death of the appellant's wife is not consistent and is likely to become even more so now that his own family responsibilities have increased again following the return of his elderly parents. The best the family have been able to arrange is for the cleaner to come in on a daily basis to assist the appellant with food and to remind him to take his medication, but again, this is only for a short period during the day. Clearly the family consider that the appellant requires closer care, which is why they are attempting to take turns to shuttle to India to spend a few weeks with him when they can, but this is clearly not sustainable on a long term basis.

32. I am satisfied that Dr Singh and Dr Bhatia are qualified to comment on the availability of care in the local area. As doctors they will have experience of treating and wide range of patients, including the elderly. It is likely that they would be aware of the facilities that might be available in the local area. It is clear from their evidence that there is little provision for elderly care in the local area, and what is available, is not likely to be adequate for the appellant's needs. The provision of specialist dementia care is lacking. Even then, both Dr Singh and Dr Bhatia outlined concerns about the appellant being placed in a care facility due to his vulnerability to Covid-19.

33. I am also satisfied that the efforts that the family have gone to thus far to try to support the appellant from afar is such that it is reasonable to infer that, if adequate care was available, they would have put in place those arrangements by now. Instead, the evidence presents a picture of a deeply precarious situation in which a vulnerable elderly man with degenerative physical and mental health conditions is deteriorating more than he might otherwise in the absence of the close and consistent care that he requires from close family members.

34. The care that the appellant requires is not only for his physical needs but also his emotional needs. He suffers from depression, which in tun exacerbates his dementia symptoms. Whilst it might be possible to put in place some practical arrangements for his physical care, the appellant's mental health and cognitive needs are not being met at the current time. He is reported to feel isolated and is often confused by his situation. It is for this reason that the medical professionals involved in his care have recommended that the consistent and close care of family members is what he now requires.

35. I am satisfied that the evidence shows on the balance of probabilities that the required level of care for this appellant is not available in India even with the practical and financial help of the sponsor. Although some people have been able to step in on a temporary basis, such as his nephew, Dr Singh, and family members travelling from abroad, they have been unable to provide the kind of consistent care required. It would also be unreasonable to expect them to continue to provide what support they have tried to give on a long term basis for the reasons they have given. I am satisfied that the required level of care is not available and that no person can reasonably provide it. Given the clinical recommendations of the appellant's doctor, the required level of care is to live with his close family members. That can only be done if he is able to enter the UK to live with them. For these reasons I am satisfied that the appellant also meets the requirements of paragraph E-ECDR.2.5 of Appendix FM.

36. The immigration rules are said to reflect where the respondent finds a fair balance is struck for the purpose of Article 8 of the European Convention.

37. I conclude that the decision to refuse the human rights claim is unlawful under section 6 of the Human Rights Act 1998.

DECISION

The First-tier Tribunal decision involved the making of an error of law

The appeal is ALLOWED on human rights grounds

Signed M. Canavan Date 09 June 2022
Upper Tribunal Judge Canavan

NOTIFICATION OF APPEAL RIGHTS

1. A person seeking permission to appeal against this decision must make a written application to the Upper Tribunal. Any such application must be **received** by the Upper Tribunal within the **appropriate period** after this decision was **sent** to the person making the application. The appropriate period varies, as follows, according to the location of the individual and the way in which the Upper Tribunal's decision was sent:

2. Where the person who appealed to the First-tier Tribunal is **in the United Kingdom** at the time that the application for permission to appeal is made, and is not in detention under the Immigration Acts, the appropriate period is **12 working days (10 working days, if the notice of decision is sent electronically).**

3. Where the person making the application is in detention under the Immigration Acts**, the appropriate period is 7 working days (5 working days, if the notice of decision is sent electronically)**.

4. Where the person who appealed to the First-tier Tribunal is **outside the United Kingdom** at the time that the application for permission to appeal is made, the appropriate period is **38 days (10 working days, if the notice of decision is sent electronically).**

5. A "working day" means any day except a Saturday or a Sunday, Christmas Day, Good Friday or a bank holiday.

6. The date when the decision is "sent' is that appearing on the covering letter or covering email