



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

Appeal Number: IA/23938/2015

THE IMMIGRATION ACTS

**Heard at Field House
On 6 December 2017**

**Decision & Reasons
Promulgated
On 15 January 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE HUTCHINSON

Between

**MRS GURDEV KAUR DEOL
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr R Rai, Counsel instructed by Gills Immigration Law

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

DECISION AND REASONS

Background

1. The appellant is a national of India born on 15 August 1926. The appellant entered the UK as a visitor with a valid visa from 4 November 2009 until 29 March 2010. She applied on 23 March 2010 for indefinite leave to remain which was refused and her appeal rights were exhausted by 1 November 2010. On 1 April 2014 the appellant submitted a human rights claim, which was refused by the respondent on 19 June 2015. The appellant appealed and in a decision promulgated on 21 February 2017,

Judge of the First-tier Tribunal Birk dismissed the appellant's appeal on human rights grounds.

2. The appellant appealed on the following grounds (as summarised by Mr Rai):

Ground 1: The judge erred in finding that there had not been a material change in the appellant's health since her previous dismissed appeal in 2010;

Ground 2: The judge erred in maintaining the finding of the previous appeal that the appellant's niece could look after the appellant, failing to take into account the significant passage of time and that the appellant last lived with her niece in 2009 for a period of only two to three months;

Ground 3: The judge failed to take into account relevant evidence both in relation to whether it was reasonable for the appellant's daughter to pay for her care in India, evidence in relation to the appellant requiring 24 hour care, evidence in relation to the burden of the appellant's daughter visiting her, whether it was unreasonable for communication to continue via modern means and that the appellant's daughter would have to pay for treatment. Whilst the appellant has had NHS treatment it was submitted that the judge failed to take into account the appellant's daughter's ability to pay for treatment and she was advised that they would not have to pay for treatment as she was over 60.

3. For the reasons set out below I am not satisfied that any error of law is disclosed and the decision of the First-tier Tribunal shall stand.

Error of Law - Discussion

Ground 1

4. The First-tier Tribunal, properly directed itself that the findings in the 2010 determination are a starting point on issues of evidence applying **Devaseelan [2002] UKAIT 00702** and the judge summarised the findings of Judge of the First-tier Tribunal M A Khan promulgated on 28 September 2010 including that neither the appellant nor her daughter, Mrs Kaur, were credible or consistent witnesses, with contradictions including in relation to funds.
5. The judge carefully considered the issue of who previously supported the appellant and the judge was satisfied that the evidence presented as a whole provided reasons and explanations as to why, since the appellant had been in the UK, she had had no support from her sons; in these circumstances the judge was prepared to accept that this was a fuller explanation than what had been previously given and found that the appellant was financially supported by her daughter in the UK. The judge also found that none of the appellant's sons are currently residing in India.

6. The judge went on to set out the appellant's circumstances prior to coming to the UK when she was looked after by her niece and considered the appellant's health condition and that there was reference in the previous determination that the appellant had been ill and in hospital previously. The judge acknowledged that the appellant spent the duration of the appeal hearing in a wheelchair and noted the evidence before her of the appellant's current conditions. This included that the appellant has been diagnosed with cancer and that the doctor estimated that she has about two years to live. However the judge went on to find, at [23] that the appellant was not having any specific treatment for cancer or for any other condition and this was not specifically disputed. The judge found that:

"All of her conditions are related to her being elderly and require some monitoring. There is no treatment flowing for the diagnosis of cancer [sic] and I note that there is no medical evidence as to her life expectancy. I do not find that in the space of the last 7 years that she is much worse or different from the medical case that she was presenting in 2010. I find that although she requires some assistance in terms of some care to help her bathe, going to appointments, having food prepared for her and some assistance in terms of toilet provision and moving around, that these are care needs that have not been demonstrated to be unmet or unavailable in India."

7. Although the main thrust of the appellant's challenge to this decision was the judge's phrasing that the appellant was not "much worse or different" from 2010, that phrase in itself is not determinative and must be considered in the context of the judge's findings in their entirety. What is important is that the judge took into consideration what assistance the appellant currently requires and made detailed and specific findings, including as to her conditions [19], and her need for care. At [22] the judge noted that "there was no medical evidence that the appellant requires 24 hour care or a level of care with specific tasks: I do not find it to be a high level of care if it can be managed by a male who himself has health issues" and this referred to the fact that the appellant's daughter stated that her own husband had serious mobility issues himself and cared for the appellant whilst Mrs Kaur and her daughter were at work. That was a finding that was properly open to the judge and she gave adequate reasons for it including that the starting point in this case was that neither the appellant nor Mrs Kaur were credible or consistent witnesses in the first hearing.
8. The fact that the Tribunal, in a measured decision, found that the appellant currently had no support from her sons, which differed from the 2010 finding, was a specific finding made on all of the factual evidence before the judge. It does not mean that she had to accept everything that was said as true and it was clear that she did not, for the adequate reasons given. It is evident that the judge took into consideration the appellant's circumstances, including that they were compelling enough to warrant consideration outside of the Immigration Rules due to the fact that the appellant at the date of determination was aged 90 and has a terminal illness. It is difficult to see therefore what error the judge made in finding

the decision was not “much worse or different” than 2010 given that the findings in their entirety show that the judge fully considered the appellant’s current medical, family and other situations at the date of the hearing.

9. The appellant’s ground 1 disclosed no error of law.

Ground 2

10. It was submitted that the judge erred in maintaining the finding of the previous appeal that the applicant’s niece could look after her and that this had failed to take into account the significant passage of time; Mr Rai submitted that the judge had failed to give adequate reasons for that finding including taking into consideration the witness statements of the appellant and her daughter including that she had no one to return to in India and that her daughter in her witness statement said that unfortunately “my mother’s friends and the remaining extended family in India do not want to care for her. They consider her to be a burden on them”.
11. It is not the case, unlike the situation in relation to the appellant’s financial support, that the judge was provided with a fuller explanation. The judge noted that prior to coming to the UK the appellant was looked after by her niece on her application form. She would have declared that she was going to return at the end of her visit. However, at paragraph 4 of Mrs Kaur’s statement, it was indicated that after a couple of months her niece had telephoned to inform her that she was refusing to take her mother back as she had her own family to look after. The judge noted that this was mentioned at the previous appeal hearing and rejected this claim, on the basis of lack of credibility and it was not accepted that there was no extended family who could support the appellant.
12. Given those negative credibility findings it cannot properly be argued that the brief reference at paragraph 12 of Mr Kaur’s witness statement, to the remaining extended family saying that they do not want to care for her, can be seen to be new evidence as this was exactly the evidence that was relied on at the first hearing including that the niece had allegedly telephoned to say she would not care for her. In the absence of any further adequate evidence to support the appellant’s claims, the passage of time does not invalidate that finding.
13. No error of law is disclosed in the second ground.

Ground 3

14. Mr Rai relied on the grounds of permission, paragraph 5(iii) through to (vi) in his third ground and submitted that given that the judge had found there was family life in this case, which was the case at [29], her subsequent findings were flawed including in relation to the family keeping

in contact by modern communication, means and that there was no proper examination of this point.

15. I do not share that conclusion. The judge, at [22], rejected the claim that the appellant required 24 hour care and it cannot be said that she did not adequately consider the evidence. She gave cogent reasons, including finding that the level of care required could not be a high level if it could be managed by Mrs Kaur's husband who had "serious mobility issues himself". In relation to the judge allegedly failing to take into account whether it was reasonable to expect the appellant's daughter to pay for care in India, again that is not properly arguable. The judge noted the extent of the appellant's care needs and that it had not been demonstrated that these would be "unmet or unavailable in India" and the judge noted at [24] that there was no evidence presented that in India there was no nursing or medical care for the appellant's medical needs and found specifically that the appellant and her family had chosen not to investigate this. Therefore there is no error in the judge's finding that financially there was no reason why her family could not support her in India nor why they could not visit her in India, as the appellant's daughter had in the past.
16. In addition in relation to the issue of whether or not the appellant's daughter had been told she did not have to pay for the appellant's treatment, it was not disputed that she has been using NHS care and that this is a public interest consideration, and this finding was open to the judge at [31].

Notice of Decision

17. In conclusion the decision of the First-tier Tribunal does not disclose an error of law and shall stand.

Anonymity

No anonymity direction was sought or is made.

Signed

Dated: 12 January 2018

Deputy Upper Tribunal Judge Hutchinson

TO THE RESPONDENT **FEE AWARD**

As the appeal is dismissed no fee award is made.

Signed

Dated: 12 January 2018

Deputy Upper Tribunal Judge Hutchinson