



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

Appeal Number: OA/09995/2013

THE IMMIGRATION ACTS

Heard at Field House

On 28 July 2014

Prepared 28 July 2014

Determination

Promulgated

On 12 August 2014

Before

UPPER TRIBUNAL JUDGE MCGEACHY

Between

ENTRY CLEARANCE OFFICER - MOSCOW

and

MS RAISA IVANOVNA MALKINA

Appellant

Respondent

Representation:

For the Appellant: Mr E Tufan, Senior Home Office Presenting Officer

For the Respondent: Mr D Seddon, Counsel of Garden Court Chambers

DETERMINATION AND REASONS

1. The Entry Clearance Officer Moscow appeals, with permission, against a decision of Judge of the First-tier Tribunal Devittie who in a determination promulgated on 9 April 2014 allowed the appeal of Ms Raisa Ivanovna Malkina against a decision of the Entry Clearance Officer, Moscow to

refuse her entry clearance to come to Britain as the dependant of her son, Dr Vadlim Malkin.

2. Although the Entry Clearance Officer is the appellant before me I will for ease of reference refer to him as the respondent as he was the respondent in the First-tier Tribunal. Similarly, although Ms Raisa Ivanovna Malkina is the respondent before me I will for ease of reference refer to her as the appellant as she was the appellant in the First-tier Tribunal.
3. The appellant is a citizen of Russia, born on 11 January 1939. She appealed against a decision of the Entry Clearance Officer made on 2 April 2013 to refuse her entry clearance as a dependent relative. The refusal was under paragraph EC-DR.1.1 of Appendix FM of the Rules with reference to Section S-EC, the reason for the refusal being that taking into account the money which the sponsor was sending to Russia, the appellant's own pension and the fact that she owned a property with her son in Moscow, she had not demonstrated that she would be unable, even with the practical and financial help of the sponsor, to obtain the required level of care in the country where she was living.
4. The judge of the First-tier Tribunal noted the evidence of the sponsor and the witness statement of the appellant and then, in paragraph 8 of the determination, having correctly directed himself to the burden and standard of proof, stated that he was satisfied that the appellant's medical condition and advancing age was such that she was in need of constant care, that she had no close relatives living in Russia and that it would not be reasonable to expect her neighbours to care for her nor that it would be reasonable to expect her to accept the care of a non-relative. He went on to say that having considered the income and expenditure figures prepared by the sponsor he accepted the sponsor's current financial circumstances were such that he could not afford to meet the costs of full-time care of the appellant without compromising his capacity to provide basic care for his wife and child in the United Kingdom.
5. The judge went on to allow the appeal under the Immigration Rules.
6. The grounds of appeal appear to argue that the judge had erred in his assessment of the Article 8 rights of the appellant. They refer to a determination of the Tribunal in **Gulshan [2013] UKUT 00640 (IAC)** and the judgment in **Nagre [2013] EWHC 720 (Admin)**. They went on to say there were no compelling or exceptional circumstances in the appellant's case.
7. The second ground of appeal also referred to the determination in **Gulshan** and appear to argue with the conclusion of the judge that care for the appellant by others than family members would be available and affordable in Russia and the matter was merely one of readjusting.

8. Permission to appeal was granted on the basis that the judge had erred in his assessment of the Article 8 rights of the appellant .
9. In a detailed skeleton argument Mr Seddon pointed out that the appeal had not been allowed on Article 8 grounds but had been allowed under the Immigration Rules. The grounds of appeal had not challenged the conclusions of the judge under the Rules. Moreover he stated that it was evident from the evidence before the judge that the judge was perfectly entitled to reach the conclusions he did and to conclude that the appellant required long-term personal care and that there was no one who could reasonably provide it.
10. Mr Tufan, when preparing the appeal, realised that the grounds of appeal did not, in fact, challenge the conclusions of the judge under the Rules. He stated that this was not an appeal on which it would be appropriate to address me in any detail.
11. The judge made findings of fact which I consider were open to him on the evidence: they were not in any way perverse. Having reached his findings of fact the judge found that the appeal should be allowed under the Immigration Rules and allowed the appeal on that basis. The grounds of appeal before me do not challenge the conclusions of the judge under the Rules but rather refer to a decision which he did not make which was that the rights of the appellant under Article 8 of the ECHR would be infringed by the decision.
12. In these circumstances, having noted the detailed skeleton argument prepared by Mr Seddon and having considered the statements of the appellant and the sponsor I have concluded that there is no material error of law in the determination of the First-tier Judge and accordingly his decision allowing this appeal on immigration grounds shall stand.

Decision

13. The appeal of the Secretary of State against the decision of the First-tier Judge allowing this appeal is dismissed.

Signed

Date

Upper Tribunal Judge McGeachy