



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

Appeal Number: EA/01478/2016

THE IMMIGRATION ACTS

Heard at Field House

On 15th March 2018

**Decision & Reasons
Promulgated
On 05th April 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE ROBERTS

Between

**JAMES [O]
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Sowerby of Counsel

For the Respondent: Ms Fijiwala, Senior Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal against the decision of First-tier Tribunal Judge Colvin promulgated on 4th May 2017.
2. The Appellant is a citizen of India born on [] 1968. He entered the United Kingdom in February 2010, pursuant to entry clearance as a student. He was granted leave to enter until January 2013, but this was revoked on November 2012 because his Sponsor's licence had ceased. The Appellant then applied for leave to remain on the grounds of UK ancestry, but this too was refused and a subsequent appeal dismissed in August 2013.

3. In both January and June 2014 and once again in March 2015, the Appellant applied for a derivative residence card under the EEA Regulations. Those applications were refused. In both September and October 2014, he applied for leave to remain on the grounds of Article 8 family/private life. Those applications were refused.
4. Most recently the Appellant made an application on 30th October 2015 for a residence card confirming a derivative right of residence as the primary carer of a British citizen, his 73-year-old mother, who suffers from alcoholism and related illnesses. This application was made with reference to the ECJ case of **Ruiz Zambrano (C-34/09)**. The application was refused by the Respondent on 25th January 2016; it is this decision that is the subject of the proceedings before the IAC.
5. The Respondent refused the Appellant's application on two bases. First it was not accepted that evidence had been produced showing that the Appellant was the primary carer of his mother. Secondly it had not been shown that the Appellant's mother would be unable to reside in the UK (or another EEA State) if he were required to leave, because other sources of care would be available to her. The notice of immigration decision issued on 25th January 2016 makes reference to Regulations 15A(4A)(b), 15A(7) (b) and 18A of the Immigration (European Economic Area) Regulations 2006.
6. The Appellant appealed the Respondent's refusal to the Immigration and Asylum Chamber. His appeal was dismissed for the reasons set out in the decision of First-tier Tribunal Judge Colvin.
7. The FtTJ in coming to his decision noted the medical evidence produced in respect of the Appellant's mother's circumstances. At [22] the judge said the following:

"There is also no doubt on the evidence before me that the appellant's mother who is aged 73 is in need of full-time care as set out in the medical evidence and various reports particularly relating to her addiction to alcohol."

This finding has not been challenged by the Respondent.

8. He followed this up in [22] saying the following:

"I also have a wealth of documentary evidence before me that shows that the appellant is his mother's primary full-time carer as defined in Regulation 15A(7). This is confirmed by the witness statements of the appellant's sister and brother who have set out their reasons why they are unable to either take over or share in the care of their mother. Some of this is confirmed in the medical evidence that these other children have effectively distanced themselves from their mother. There are also letters (some are set out above) from medical and social services sources that refer to the appellant as having primary responsibility for the care of his mother."

9. At [23] the FtT found that whilst Brent Adult Social Services had some role to play, it was clear that the Appellant's commitment to caring for his mother and the emotional and practical support he gave her was what she felt most comfortable with, rather than the experience she had previously with carers from social services. Drawing these matters together, the judge made a finding that the Appellant had shown that he is his mother's full-time primary carer for the purposes of Reg.15.EEA Regs 2006.
10. Having made that finding, the judge then went on to consider the key question in this appeal, that is would the Appellant's mother be unable to reside in the UK if the Appellant was required to leave?
11. The judge set out his consideration of this issue at [25] and came to a conclusion adverse to the Appellant. In doing so he noted that whilst the Appellant's mother made it clear in a written statement that she would not wish to continue living if the Appellant left her, there was no doubt that social services would have a statutory obligation to step in and undertake her care. The judge accepted that as the Appellant's mother is in need of full-time care, which cannot reasonably be provided by any other family member in the UK, the likelihood was that the Appellant's mother would be placed in a residential care home at public expense. He noted that this was not her wish, but concluded that it could not be shown that the Appellant's mother would be unable to reside in the UK if the Appellant were required to leave.

Onward Appeal

12. The Appellant sought permission to appeal the FtT's decision. Permission to appeal was initially refused in the First-tier Tribunal. The renewed application for permission is dated 12th December 2017 and draws heavily upon the case of **Chavez-Vilchez and Others (C-133/15)** which was decided by the CJEU on 10th May 2017.
13. The grounds asserted that whilst it was accepted that this case was not before the FtT because it had not at that time been heard, it could nevertheless impact on the outcome of the current case. It was said that the judge, having accepted that the Appellant was the primary carer of his mother, ought to have gone on in the light of **Chavez-Vilchez** to consider what was in the best interests of the Appellant's mother. He ought to have considered whether, despite the fact that social services would be under a duty to provide care for the Appellant's mother, would she nevertheless be compelled to leave the UK given the level of emotional and physical dependency that she has on her son?
14. Permission was granted in the following terms:

"It is arguable that in determining whether the appellant's mother would be "unable" to reside in the UK or another EEA State if the appellant was required to leave, the First-tier Tribunal has adopted an overly narrow approach and failed to take into account: (i) whether the mother would in fact consent to being placed in a residential care

home; (ii) her risk of suicide without the appellant, given her past history and present circumstances (as summarised at [4] to [12]).”

15. Thus the matter comes before me to determine whether the decision of the FtT discloses such error of law that it requires to be set aside and remade.

Error of Law Hearing

16. Before me Mr Sowerby appeared for the Appellant and Ms Fijiwala for the Respondent. At the outset of the proceedings Ms Fijiwala handed up the Court of Appeal decision in **Nilay Patel and Others [2017] EWCA Civ 2028**. Mr Sowerby in his submissions acknowledged that **Patel** clarified much of the argument which had been set out in the grounds and which had relied upon **Chavez-Vilchez**.

17. Nevertheless, he said he would rely on [72] of **Patel** in which Lord Justice Irwin says the following:

“In my judgment, the decision in **Chavez-Vilchez** represents no departure from the principle of EU law laid down in **Zambrano**, although it does constitute a reminder that the principle must be applied with careful enquiry, paying attention to the relevant criteria and considerations, and focusing not on whether the EU citizen child (or dependant) can remain in legal theory, but whether they can do so in practice. There is no alteration in the test of compulsion.”

18. Mr Sowerby’s followed this by saying that the FtTJ’s clear finding was that the Appellant is the primary carer of his mother. The judge ought then to have undertaken a careful enquiry on whether the Appellant’s mother could remain in the UK for all practical purposes without her son. Those enquiries should have focused on the Appellant’s mother’s statement in which she declared that if her son left she would have “nothing to live for” and would commit suicide. He submitted that the FtTJ could not be said to have given adequate reasons demonstrating that he had made a careful enough enquiry bearing in mind the suicide element involved.
19. Mr Sowerby acknowledged that there was no up-to-date medical evidence available and submitted therefore that the appropriate course would be for me to set aside the FtT’s decision and remit the appeal to the First-tier Tribunal in order that the Appellant’s mother’s medical and social history could be properly assessed, given the level of dependency that she has on her son.
20. Ms Fijiwala on behalf of the Respondent defended the FtT’s decision. She said firstly that the FtTJ had referred to all the evidence which had been placed before him. This included a large amount of medical evidence outlining the various medical problems from which the Appellant’s mother suffers, and which points to her requiring full-time care.
21. The FtTJ also acknowledged the evidence concerning suicidal ideation. She submitted that it was clear that the judge took this evidence into

account when reaching his conclusions. She referred to **Patel**, which in turn had referred to a decision of the Upper Tribunal in **Ayinde and Thinjom (Carers - Reg 15A - Zambrano) [2015] UKUT 00560 (IAC)**. She submitted that following the principles set out in those cases, if state provision in terms of medical or social services care is both a right of a dependant adult and is in fact available, then the class of dependant adults who can demonstrate “compulsion” to follow a non-British carer abroad may be limited. She submitted that the decision of the FtTJ disclosed no error of law. The FtTJ was perfectly correct to refer to the statutory duty of social services which would be available to the Appellant’s mother in addition to her NHS care. There was no transparent evidence provided by the Appellant to demonstrate that his mother would be unable to reside in the UK within the terms of Regulation 15, should he be required to leave.

22. At the end of submissions I reserved my decision which I now give with reasons.

Consideration

23. I start my consideration by dealing with the challenge raised by Mr Sowerby that the FtTJ has not given a fully nuanced assessment of the details surrounding the Appellant’s case, and in particular that the FtTJ had not paid sufficient attention to the idea that the Appellant’s mother has threatened suicide and is aggressive in drink. In addition he said that insufficient attention had been paid to the fact that social services have neglected her.
24. In considering Mr Sowerby’s line of challenge I find that the FtTJ dealt fully with, and took account of, the evidence before him. Much was made of the suicidal ideation from which the Appellant’s mother is described as suffering. I note in particular that the Appellant in his witness statement said that his mother had attempted to “commit suicide on many occasions” endangering the lives of others in the process. I cannot see clear independent corroboration of this assertion in the evidence. Certainly there are copies of medical reports that refer to the Appellant’s mother’s alcohol misuse. Her mental state is referred to in particular in reports from the Freedom Recovery Centre dated 16th July 2013 and from Turning Point (Central and North West London NHS) dated 30th June 2014. The former mentions that, “Issues of suicide ideation, bereavement and rejection were also identified during her assessment.” The latter states, “Client denies suicidal ideation at the moment but says thoughts of suicide crossed her mind from time to time. Son recalls incident last year when client attempted to jump in front of a train. Client cannot recall the incident.” I cannot find reports that elaborate this issue in more detail, describe ongoing follow-up, or that are more up to date.
25. I accept that there was before the FtTJ a statement from the Appellant’s mother in which she claimed that if her son was removed, she would have nothing to live for. The judge refers to it [25]. However it is clear that as

the judge found, the issue before him was not whether the Appellant's mother's preference would be to have her son look after her, but whether she would be unable to reside in the UK if the Appellant were required to leave. The FtTJ was satisfied that the statutory authorities would be able to provide adequate support.

26. The second broad challenge raised by Mr Sowerby was made on the basis that the FtTJ had not paid sufficient attention to the fact that, it is said, social services neglected to care properly for the Appellant's mother and that the Appellant provides a greater level of care for her. I find in fact that the judge did recognise the Appellant's contribution. He records the following at [23]:

"Whilst clearly Brent Adult Social Services have had some role to play as shown in the correspondence I strongly suspect (as confirmed by the appellant) that they are relieved that the appellant is playing this role for his mother rather than calling upon their over-stretched services."

Nonetheless he has concluded at [25]:

"... through a combination of the NHS and public care system available to her in the UK it cannot be shown that the appellant's mother would be unable to reside in the UK if the appellant was required to leave."

27. I find that this is a conclusion that was open to him to make. Therefore it follows that I find force in Ms Fijiwala's argument where she said, drawing upon **Patel** with reference to **Ayinde and Thinjom**, that the FtTJ was correct to state that Brent Social Services would be under a statutory obligation to manage the Appellant's mother's social care, such care and NHS treatment being available to her as a British citizen.
28. I find that the challenge that the Appellant's mother's physical and emotional dependence upon the Appellant is so great that she would be compelled to leave the UK with her son, is not made out. The evidence put forward does not demonstrate this.
29. It follows therefore that for the foregoing reasons I find that the FtTJ properly considered all the evidence which was before him, reached conclusions that he was entitled to reach on that evidence and that accordingly the decision promulgated on 4th May 2017 discloses no error of law. The decision therefore stands and this appeal is dismissed.

Notice of Decision

Appeal dismissed.

No anonymity direction is made.

Signed
2018

C E Roberts

Date

27

March

Deputy Upper Tribunal Judge Roberts