# ASYLUM AND IMMIGRATION TRIBUNAL

**THE IMMIGRATION ACTS**

Heard at: Field House Date of Hearing: 9th October 2007

Before:

**Mr Justice Hodge, President**
**Senior Immigration Judge Freeman**
**Senior Immigration Judge King**

Between

**TR**

Appellant

and

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

Representation
For the Appellant: Mr Simon Cox (Counsel)
For the Respondent: Mr Mark Blundell (Home Office Presenting Officer)

*For a relative to satisfy regulation 8(3) of the EEA Regs 2006 the "serious health grounds" need to be significantly beyond ordinary ill health and as a matter of practice will require detailed medical evidence in support of any claim. Personal care must be provided on a day to day basis and relate either or both to the physical and mental tasks and needs required for a person to function. "Strictly" is a restrictive or limiting requirement and imports a need for complete compliance or exact performance and reinforces the need for personal care to be provided on a day to day basis.*

## DETERMINATION AND REASONS

1. This is an appeal against the respondent's refusal, dated 3rd July 2006, to issue a residence card to the appellant as confirmation of a right of residence as an extended family member of an EEA national.

Immigration Judge Turquet dismissed the appeal on 25th September 2006. A reconsideration was applied for and ordered, and at a first stage reconsideration, heard on 9th February 2007, this Tribunal, similarly constituted, concluded that there had been a material error of law in part of the determination of Immigration Judge. The reasons for that conclusion are set out below.

1. The appellant was born on the 18 July 1978 and is a citizen of Sri Lanka. He claimed asylum on arriving in the United Kingdom in March 2001 but his appeal rights were extinguished by October 2003. He applied for a residence document on 20 December 2005. He claimed a right of residence as the relative of an EEA national exercising his treaty rights.

2. On 3 July 2006 the respondent gave notice of his decision to refuse to issue a residence card, relying on regulations 7 and 8 of the Immigration (European Economic Area) Regulations 2006 (SI 2006 no. 1003) (the 2006 Regulations). The appellant's appeal was heard by Immigration Judge Turquet. Her decision was promulgated on 25 September 2006 and the appeal was dismissed.

3. It was contended on behalf of the appellant by his counsel, Simon Cox, that the immigration judge erred in law by holding that the appellant could not rely on Article 10(2) of the EEC Regulations 1612/78 as implemented in the UK, most recently by the Immigration (European Economic Area) Regulations 2000 (SI No. 2326) (the 2000 Regulations) because of the repeal of those two sets of regulations with effect from 30 April 2006 by the Council Directive 2004/38/EC, as implemented by the 2006 Regulations. The basis for this submission was that the application was made on 21 December 2005 before the implementation of the 2004 Directive and the 2006 Regulations. It was submitted that the failure to complete the decision on the case prior to 31 April 2006 meant that the appellant lost the benefit of Regulation 10(2) of the 2000 Regulations. The appellant was, it was said at all relevant times, dependent on his sister and brother-in-law, his brother-in-law being an EEA national who had exercised his treaty rights by moving from Germany to the UK. The appellant had never lived with the brother-in-law in Germany but had been dependent, it was claimed, on him and his sister whilst living in the UK.

4. It is further said that as a relative of an EEA national exercising Treaty Rights and being also dependent on that EEA national, the appellant would have been entitled to the issue of a residence permit under Regulation 10(1) of the 2000 Regulations. He met, it was claimed, the conditions in regulation 10(4), being a 'relative of an EEA national or his spouse and…dependent on the EEA national or his spouse'.

5. The immigration judge decided that the appellant was not dependent on the EEA sponsor. This decision might be wrong in law given the Tribunal's decision in LS (EEA Regulations 2000 – meaning of 'dependent') Sri Lanka [2005] UKAIT 00132. That case had regard to the European Court of Justice case Lebon (ECJ Reports 316/85 judgment 18 June 1987) in deciding that the dependency need not be

one of necessity. Such an error was not however material to the immigration judge's decision as to whether this appellant was an "extended family member" under regulation 8(2) of the 2006 Regulations. The immigration judge found, and this was, it appears, undisputed, that the appellant had not lived in an EEA country other than the UK with the EEA national sponsor, nor indeed in Sri Lanka. For that reason alone, whether or not he was dependent in the UK, he had not been previously dependent and so could not satisfy regulation 8(2).

6. Mr Cox also argued on behalf of the appellant that because the application for a residence permit was made prior to the implementation of the 2006 Regulations and the 2004 Directive, the application had to be considered under the older Directive and the 2000 Regulations. To do otherwise he said, was to go against the principles of legal certainty.

7. Schedule 4, paragraph 3 of the 2006 Regulations provides:

   3(1): An application for an EEA family permit, a residence permit or a residence document, made but not determined under the 2000 Regulations before 30 April 2006, shall be treated as an application under these regulations for an EEA family permit, a registration certificate, or a resident's card, respectively.

   This provision makes it absolutely clear that applications made, as here, prior to the implementation of the 2006 Regulations but not decided before their implementation, are to be treated as applications under the 2006 Regulations. The provision makes the 2006 Regulations retrospective. This tribunal in MG v VC (EEA Regulations 2006 conducive deportation) Ireland [2006] UKAIT 00053) said at paragraphs 16 and 17:

   > "16. The first thing that is apparent is that the new regulations came into force immediately on 30 April 2006 and that the previous law is no longer in effect. The effect on existing decisions and appeals is quite remarkable…They are to be treated as decisions and appeals under the new regulations. The consequence may be that a decision, lawful when it was made, and a determination by the tribunal containing no error of law when it was made, may now disclose an error of law because of the retrospective change of the decision and its authority.
   > 17. Those considerations apply directly in relation to decisions under the previous regulations and appeals against EEA decisions under those regulations."

8. In this case only the application was made when the 2000 Regulations were in force. The decision under appeal was in fact made on 3rd July 2006 when the 2006 Regulations were in force. Mr Cox, argued that the principle of legal certainty as interpreted by the European Court of Justice in Belbouab v Bundesknappschaft (ECR 1978 page 01915) applied. So, it is said, as the application was made when the old 2000 Regulations were in force the law applicable to it ought to be the pre 30th April 2006 law. In Belbouab the appellant was an Algerian national.

He had been a French national in the 1950s and had worked as a mine worker in Germany. When Algeria became a new state he lost his French nationality. During his period in Germany he had acquired rights to a pension. His application for that pension was rejected by the German authorities on the basis that he no longer had nationality of a member state of the European Union and was therefore no longer entitled to the pension.

So M. Belbouab had been a national of a member state when he acquired his pension rights. The ECJ said at paragraph 7:

"It is clear from this that the criterion of nationality laid down (in regulations) must be examined in direct relationship to the periods during which the worker in question carried on his work."

Further they provided that:

"In order to satisfy the principle of legal certainty, one of the requirements of which is that any factual situation should normally, in the absence of any contrary provision, be examined in the light of the legal rules existing at the time when that situation obtained, the second condition must be interpreted as meaning that the status of being a national of one of the member states refers to the time of the employment of the payment of the contributions relating to the insurance periods and of the acquisition of the corresponding rights."

9. We do not see this as in any way supportive of the submission that legal certainty requires decisions in cases such as this to be made on the basis of the law as it was at the date the application was made. Mr Belbouab had acquired rights during the period he was employed as a mine worker in Germany, having no doubt paid relevant insurance contributions. They were personal to him and had been earned by him. He was also a French citizen at the time and so a citizen of an EU state. The dependency here is in no way equivalent. The appellant was not by such dependency as he may have had acquiring rights in an EEA state still less exercising any rights as a worker or a citizen of an EEA state none of which he was. Belbouab does not in our judgment assist this appellant. The decision by the respondent and by the immigration judge were both properly made in the light of the relevant law applying at the time of each decision. Each had to apply the 2006 Regulations as do we.

10. We do not regard the position as in any way unclear. The transitional provisions are themselves entirely clear. It is open to the legislature to implement the Directive in such a way as it chooses. As the immigration judge pointed out, Article 37 of the Directive "does not inhibit Member States from repealing more favourable provisions or seeking to limit their scope so long as any laws, regulations or administrative provisions are not inconsistent with the Directive". It may be the position might have been more favourable to the appellant under the 2000 Regulations, but he can no longer benefit from that provision. This is not an issue in our judgment which requires a reference to the European Court of Justice.

11. We conclude that there was no material error of law made by the immigration judge in deciding that the 2006 Regulations applied to this case and that the appellant could not satisfy regulation 8(2) in particular. Nor (although this was not argued before us) could he satisfy regulation 8(4) as he did not meet the requirements in the immigration rules for indefinite leave to enter or remain in the UK as a dependent relative of an EEA national.

12. However, the immigration judge did make an error of law in the manner in which she approached the appellant's potential entitlement to be treated as an extended family member in relation to the application of regulation 8(3) of the 2006 regulations:

    8(3) A person satisfies the condition in this paragraph if the person is a relative of an EEA national or his spouse or his civil partner and, on serious health grounds, strictly requires the personal care of the EEA national, his spouse of his civil partner.

    The judge said at paragraph 28:

    "This appellant was not living with an EEA national or his spouse or civil partner before they moved to the United Kingdom. He did not come to the United Kingdom because of his health problems."

    This in our judgment is clearly a wrong approach. Contrary to the position under regulation 8 (2), there is no requirement in regulation 8(3) of the 2006 regulations that the "extended family member" needs to have resided in another EEA country with the EEA national sponsor. If an EEA national is in the United Kingdom exercising Treaty Rights he can be potentially joined by any person who is a relative who "strictly requires the personal care of the EEA national…or…his spouse". The requirement for previous residence together in another EEA state is not present in that regulation, as it is in reg. 8 (2).

13. A significant amount of consultant psychiatric evidence was before the immigration judge. There were two psychiatric reports. One was from a Dr Patterson who had seen the appellant on three occasions from November 2003 to July 2006. The second was from Dr Gunan Kanagaratnam who had been treating the appellant for over two years and seeing him, in the main, each fortnight. There was also evidence before the judge from the appellant, his sister and his brother-in-law, the latter being the EEA national. The judge accepted that the appellant "has some mental problems". There were some incidents of self-harm. The judge at no stage addresses the issue of what as a matter of law the phrase "strictly requires the personal care of an EEA national…or...his spouse" means. There was evidence about some health care before the judge. But in our judgment such evidence needs analysing and relating to what the concept of "strictly requires personal care" means in the context of the legislation.

14. It was argued before us by Mr Blundell on behalf of the respondent that the test is a high one and there was enough for us to say that it was not satisfied in this case. Mr Cox on the other hand contended that there was adequate evidence for us to make a decision and that the

appellant did require such care and the appeal should be allowed. We considered both these submissions and concluded that, before any decision could be made, we required further and fuller submissions on the law and to consider the evidence on health care and such further evidence on care as might be adduced.

15. We concluded that there had been a material error of law in this case in the handling of the evidence relating to the phrase "strictly requires the personal care of..." and the meaning of the phrase itself. We therefore adjourned the case for a second stage reconsideration, so that these matters can be canvassed.

The issues

2. The issue before the Tribunal at the second stage reconsideration hearing was whether or not the appellant satisfies the provision of regulation 8(3) of the Immigration (European Economic Area) Regulations 2006 [SI 2006 Number 1003]. Is he "a relative of an EEA national or his spouse... and on serious health grounds strictly requires the personal care of the EEA national, (or) his spouse..." It is accepted that the appellant lives with an elder sister, here called "the appellant's sister", in Sutton, Surrey. This sister is married to a Sri Lankan, "the appellant's brother-in-law", who, in the 1990s, lived in Germany and became a German national. He and his wife lived in Germany and ran a business there until approximately 2001. Since 2002, both have lived in the UK. The appellant's brother-in-law is therefore in the UK exercising his right as a citizen of the Union to move with his family members and reside freely within the UK. For the purposes of regulation 8(3) of the 2006 Regulations, the appellant is a relative, i.e. the brother, of the spouse of an EEA national. It is his case that, "on serious health grounds", he "strictly requires" from his sister "the personal care " of her as the spouse of an EEA national.

Factual background

3. The appellant came to the UK on 5th March 2001 and claimed asylum when he arrived. That claim was refused but he appealed. His appeal was heard in 2003, and the determination was promulgated on 10th June 2003. The adjudicator (Mr J. Azam) dismissed the appeal. He did not consider that the appellant was at risk of persecution or of Article 3 ill treatment on any return to Sri Lanka.

4. The adjudicator made findings of significant relevance to this appeal. He accepted that the appellant had been held in custody by the authorities in Sri Lanka because of his imputed political opinions. The adjudicator also accepted that whilst in custody the appellant had been anally raped, tortured and ill-treated. He had concluded, however, that the appellant was of no further interest to the authorities in Sri Lanka, and he had been held and made to do labour until released on payment of a bribe.

5. The adjudicator also disbelieved certain aspects of the appellant's claim. In particular, he did not accept the appellant's story as to how he left Sri Lanka. He also did not accept that the appellant's claimed fears of the LTTE were well founded. The asylum appeal was dismissed and not successfully further appealed. On 20th December 2005, the appellant applied for a residence card as an extended family member of an EEA national. It is that appeal that is before us and in particular we need to consider whether on serious health grounds this appellant strictly requires the personal care of the EEA national and/or his spouse.

6. The appellant has seen and been reported upon by a number of consultant psychiatrists. A psychiatric report by Dr Anthony Coleman on 8th April 2003 diagnosed the appellant as suffering from post-traumatic stress disorder (PTSD) and depression. Dr Anne Patterson, in reports dated 29th November 2003, 22nd April 2005, 14th September 2006 and 30th September 2007, in all cases confirmed that diagnosis. Since at least 2005, and possibly before, the appellant has been treated on a regular basis, currently monthly, by another consultant psychiatrist, Dr Kanagaratnam. He has provided a number of reports, the most recent being dated 4th October 2007. He too confirmed the diagnosis of PTSD and depression.

7. It is also accepted that the appellant misled the authorities and the adjudicator who heard the appeal in 2003. Immigration Judge Turquet found that the appellant and his relatives had not been honest in the past. The appellant had not claimed to have a relative who was an EEA national or married to an EEA national. He did not tell the authors of the medical reports up to 2003 that he was living with his sister. His brother-in-law made a statement describing himself as a landlord. The Immigration Judge made a finding that this was an attempt deliberately to deceive the adjudicator. She did however find that the sister and brother-in-law were related as claimed.

8. The appellant was mugged in March 2003 whilst on the way to attend a consultation with Dr Patterson. Prior to that he had held a job down for one month and had gone to college. Subsequent to the mugging, he and his family say, and the psychiatrists accept, that his condition has deteriorated.

<u>The respondent's challenge</u>

9. It is the respondent's case that the evidence of the appellant and his witnesses is full of contradictions and should not be relied on. In so far as the psychiatrists have relied on what has been reported to them by the appellant and his witnesses, such findings have to be open to question.

10. The respondent moved into the appellant's home in Sutton when he arrived in the UK in March 2001. For the first fifteen months or so of his stay, it appears that the appellant's sister and brother-in-law spent the bulk of their time in Germany, no doubt winding up their business affairs there. The respondent says that the appellant was not, during that period which concluded in 2002, looked after on a regular basis by anybody. The appellant's evidence in relation to this has not been consistent.

11. Another brother-in-law, Mr B…, in a statement dated 21st January 2007, purported to deal with a finding by Immigration Judge Turquet that the appellant had been left "living alone" for a fifteen-month period in 2001/2002. He said that either himself or his wife, another sister of the appellant, went to see the appellant at his house in Sutton nearly every day. It was not his written evidence that he or his wife stayed there on any regular basis. Before us, Mr B… gave evidence that "somebody stayed every night" with the appellant in the fifteen-month period under consideration. It was either his wife, he said, or an older brother of the appellant.

12. It is therefore the respondent's case that the factual evidence about the care both required by and given to the appellant is inconclusive from the various witnesses and should not be relied upon. It is also submitted that the psychiatrists Dr Patterson and Dr Kanagaratnam have been in part misled by not being provided with copies of the determination of Immigration Judge Turquet, where she makes findings against the credibility of the appellant.

Our conclusions on the facts

13. We do not accept on the evidence we have heard that, during the fifteen months in 2001/2002 when the appellant's sister and her husband were mainly in Germany, on each and every night somebody was staying with the appellant in the house in Sutton. We do accept that there was almost daily visiting there and care provided by various relatives in relation to cooking and the provision of medication. The evidence points clearly to that conclusion. We also accept that the appellant during this period did spend some time staying with relatives. However, the constant nightly care apparently now claimed was not in our view in fact present.

14. We are however satisfied that since the appellant's brother-in-law the EEA national and his wife, the appellant's sister, have permanently settled in the UK from 2002, the appellant has lived with them and been looked after by them on a daily basis. We heard evidence that the sister and brother-in-law have been abroad for short periods over the five years since 2002. We were told, particularly in relation to the more recent absences, that the appellant either stayed with the other

sister and brother-in-law or the family members came to stay at the house in Sutton. The evidence points to the need, it is said, for constant assistance to the appellant. We accept that such assistance has been provided, particularly in more recent years.

15. We also accept the evidence which suggests that the appellant's condition had improved for a period prior to March 2005, when he was mugged. Thereafter, both consultant psychiatrists are of the view that the appellant's condition has worsened. We accept that view.

16. We have considered whether the consultant psychiatrists' reports and diagnosis can have been adversely affected by such wrong information as may have been given to them by the appellant and his relatives. All three psychiatrists who have reported accept that the appellant suffers from PTSD. The adjudicator has previously accepted that the appellant had been tortured as referred to in paragraph 4 above. This is the foundation of the PTSD diagnosis. Dr Patterson and Dr Kanagaratnam accept the evidence they have heard from the appellant and the relatives that the appellant wakes three to four nights every week and screams. Dr Patterson, in her latest report, considers the extent to which the appellant is dependent upon his sister, brother-in-law and their family because of his mental state. She says:

*"In my opinion, he remains just as heavily dependent on his relatives as before. This is confirmed in the statements of his relatives to which I have had access and have listed above. His sister and his brother-in-law, with whom he lives, are so concerned about his state of mind, at night, in particular his waking up screaming and sleep-walking, that they have installed the equivalent of a baby alarm in his bedroom to monitor him. The care that he requires because of his impaired mental state is more appropriate to that of a primary school child than a man of nearly thirty. In my opinion, he is unequal to fulfilling the tasks of everyday adult life without their support."*

17. Dr Kanagaratnam in his most recent report notes that the appellant is generally brought to his regular consultations by a member of the family. The consultant describes the appellant as demonstrating "features of avoidance and emotional numbing, and he is not readily able to engage in conversations, activities or visit places… he becomes quite aroused or agitated when he is challenged". The consultant says "it is improbable from my observation of him in view of his mental state that he will be able to understand the nature of oral questions put to him or give instructions or properly follow the proceedings" at a hearing.

18. Dr Patterson considered that the appellant was not fit to give evidence and has said so in all her reports. She regarded the process as "retraumatising" for the appellant. She further considered that the appellant's "state of mind has not improved since my previous review

last year". Both psychiatrists also regard the appellant as a suicide risk, particularly if he is returned to Sri Lanka.

19. We acknowledge that a good deal of the information which has been given to the psychiatrists and on which each of them relies has come directly from the appellant and periodically and indirectly from the appellant's witnesses. We are however satisfied having considered all the reports that the psychiatrists have made objective assessments of the appellant. Both have long knowledge of him and, in particular, Dr Kanagaratnam. Both are convinced that the appellant has PTSD and depression and is a suicide risk.

Serious health grounds

20. Most unusually, this appellant has, since at least 2003, had the benefit of the advice of three different psychiatrists and has throughout most of that time been treated on a regular basis by one of them. Dr Patterson in particular and Dr Kanagaratnam, the treating psychiatrist, both have long knowledge of the appellant and of his continuing treatment. Their reports are consistent. We are satisfied from the evidence from the psychiatrists that the appellant has serious mental health problems. To satisfy regulation 8(3) of the EEA Regulations 2006 the appellant has to show "serious health grounds". We have no doubt the use of the word "serious" requires the "health grounds" to be well beyond ordinary ill health and as a matter of practice to require detailed medical evidence in support of any claim. We consider the evidence is such as to show that this appellant can be properly categorised as having "serious health grounds" as required by the regulation.

Personal care

21. Unsurprisingly, there is no definition of "personal care" in the legislation. We were much assisted by Mr Blundell on behalf of the respondent who drew our attention to a number of sources which might provide some guidance as to the meaning of the phrase. These included a Department of Health pamphlet entitled "Supported housing and care homes – guidance on regulations" from April 2002; a Disability Living Allowance Customer Information Leaflet from the Department for Work and Pensions, Disability and Carers Service from January 2006; and Acts of the Scottish Parliament including the Community Care and Health (Scotland) Act 2002 section 1 and Schedule 1. The Regulation of Care (Scotland) Act 2001 (ASP8) at section 2 (28) provides a statutory definition of "personal care" for the purposes of that Act as follows:

*"Personal care means care which relates to the day to day physical tasks and needs of the person cared for (as for example, but without prejudice to that generality, to eating and washing) and to mental*

*processes related to those tasks and needs (as for example, but without prejudice to that generality, to remembering to eat and wash).”*

22. We consider that section 2(28) provides helpful guidance by which the concept of personal care within the EEA Regulations can be considered. We have looked at the evidence before us with that in mind.

23. In Dr Patterson’s report of 29th November 2003, she describes the appellant as being looked after and doing no shopping, cooking or housework. He said he could not do anything. He was “unable to manage” (page 5). He was “in need of care and attention” and “reliant on external sources of support” (page 18). The doctor described the appellant then as being not fit to give evidence and she has continued in that view throughout all the rest of her reports to that of October 2007.

24. In Dr Patterson’s report of 20th July 2005, she said the appellant does nothing unless prompted and he was entirely dependent on his sister-in-law (page 3). She thought there was a significant deterioration in his mental state and level of functioning at that time (page 5). He was less fit to give evidence than before (page 8). On 14th September 2006, she said that the appellant was “dependent on his relatives”. He had to be told to bath, manage his clothes, do any washing and clean his room (page 3). She thought there was no significant change in his state since the previous year (page 5). She reported at page 6 that the appellant’s “sister prompts him with self-care, laundry and the importance of eating”. “In my opinion”, she said, “their constant presence and vigilance acts as a protective factor against further self-harm, although he has resorted to burning himself in the past and was unable to guarantee that he would not repeat this”. She regarded him as unable to function as an independent adult, and that he needed to be escorted as if he were a child (page 7). Her updated report, signed 30th September 2007, is quoted from at paragraph 16 above and repeats these views.

25. Dr Kanagaratnam supports these views in his various reports. His view is summarised in his supplementary psychiatric report of 4th October 2007, page 6, as follows:

*“Mrs S… (the appellant’s sister) and her family continue to provide him with care and emotional support that is essential for his stability and prevent suicide. This will continue to be a requirement if a satisfactory prognosis is to be achieved. Mr and Mrs S… (the people he lives with) continue to play the leading role in his care although they are usefully supported in this function by other members of the family who live close by.”*

26. We have noted above that information on which the psychiatrists base their views has been provided, as necessarily is the case, by the appellant and his relatives. We conclude, however, at paragraph 19, that the psychiatrists have made objective assessments of the appellant and we remain of that view. The evidence in our judgement points clearly to the appellant as having needed personal care from his sister, the wife of the EEA national, from 2003 onwards. We accept that the need for personal care was reduced for the apparently brief period when he found a job stacking shelves, and prior to his mugging in Croydon on 19th March 2005. Thereafter the evidence is consistent that he needs personal care.

27. It is clear from the evidence that there have been brief periods when the appellant's sister, the wife of the relevant EEA national, and her husband have been away. In those circumstances, care has been provided on the evidence by other members of the appellant's family. We do not consider that the regulation has to be interpreted as meaning that the requirement for personal care must be for twenty-four hours a day, seven days a week from the relevant person. There has to be some allowance for respite for any carer. But to satisfy regulation 8(3) the "personal care" must be provided on a day to day basis and relate to either or both the physical and mental tasks and needs required for a person to function. The evidence points clearly in our view to the personal care being provided for the overwhelming majority of the time by the appellant's sister.

28. We therefore consider that in this case the clear medical evidence shows that the appellant has PTSD, depression and is a suicide risk. The doctors consider that the appellant functions at a very low level and we consider the evidence shows that he does "require the personal care" of his sister given his current state of health. If some of the uncertainties he faces are removed or reduced, the evidence from 2005 suggests that he may improve in the future, but, for the present, he requires the personal care.

Strictly requires

29. "Strictly" is defined in the Oxford English Dictionary as "requiring complete compliance or exact performance". "Strictly" is a restrictive word and cases under regulation 8(3) must be restrictively construed. It reinforces the need for the personal care to be provided on a day to day basis. In this case, the full and detailed medical evidence points to the appellant "strictly" requiring personal care at the time of the decision on his application by the Secretary of State and continuing up to the date of this hearing. The evidence points to the appellant needing such help. It may be it was not so needed when the appellant arrived in the UK in March 2001. But it is now and has been since 2005. The Tribunal must consider the position as at the time of the decision appealed against and subsequently.

Conclusion

30. In our judgement, for a relative to satisfy regulation 8(3) the "serious health grounds" need to be significantly beyond ordinary ill health and as a matter of practice will require detailed medical evidence in support of any claim. Personal care must be provided on a day to day basis and relate either or both to the physical and mental tasks and needs required for a person to function. "Strictly" is a restrictive or limiting requirement and imports a need for complete compliance or exact performance and reinforces the need for personal care to be provided on a day to day basis.

31. The reasons for refusal letter in this case and the notice of Refusal to Issue a Residence Card were both issued on 3rd July 2006. Neither referred in terms to regulation 8(3) of the EEA Regulations, nor to the tests that the appellant seeks to satisfy that he "strictly requires the personal care" of here the spouse of an EEA national who has exercised his treaty rights in moving to the UK. Both advocates submitted to us that if we declined to uphold the decision of the Immigration Judge in dismissing this appeal then the matter had to go back to the Secretary of State. We agree. Accordingly, on this reconsideration, we do not uphold the Immigration Judge's decision and allow the appellant's appeal to the extent only that the application be referred back to the Secretary of State for a further decision. In reaching any decision on this application, the Secretary of State will no doubt have regard to the findings we have made and the views expressed in this determination.

Decision

32. The appeal is allowed to the extent that the decision of the Immigration Judge is not upheld and the matter is referred back to the Secretary of State for a further decision on the application.

**MR JUSTICE HODGE**
**PRESIDENT**
Date:
19/12/2007