

# **IMMIGRATION APPEAL TRIBUNAL**

Date of Hearing: 13 December 2004  
Determination delivered orally at Hearing  
Date Determination notified: 26/01/05

Before:

Mr C M G Ockelton (Deputy President)  
Miss K Eshun (Vice President)  
Miss B Mensah (Vice President)

Between:

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

APPELLANT

And  
(.....)

RESPONDENTS

For the Appellant:	Mr C Colombo, Home Office Presenting Officer
For the Respondent:	No appearance

## **DETERMINATION AND REASONS**

1. The Appellant is the Secretary of State. He appeals, with permission, against the determination of an Adjudicator, Mr Graham Manchester, who allowed to a limited extent the appeal of the Respondents, whom we shall call the Claimants, against his decision on 7 August and 1 August respectively refusing to vary their leave.
2. The Claimants did not appear and were not represented before us. A full bundle had been submitted with a full skeleton argument and we were informed that Counsel who had intended to represent them had simply sent a message saying that he was ill today. In the circumstances, we considered that no adjournment was necessary in the interests of justice and we exercised our discretion to proceed with the appeal in the absence of the Claimants.
3. The Claimants arrived in the United Kingdom on 11 June 2000. They are citizens of Pakistan and had sought and obtained in

Islamabad entry clearance as visitors. They were granted leave to enter as visitors for six months. We should say that the avowed purpose of their visit as declared to the Entry Clearance Officer in Islamabad was in order to visit their parents, (.....) and (.....) who were ill. They had both been ill for some time and, during their interview, the Claimants told the Entry Clearance Officer that they had got worse.

4. On 12 September 2000, the Claimants' parents applied, on the Claimants' behalf, for indefinite leave to remain for the Claimants to look after the parents. There is no doubt that the application was for an indefinite period properly so called: that is not to say for ever, but in order for the Claimants to be with their parents during their declining years and final days. Medical evidence was provided.
5. In the course of investigating that application, the Secretary of State obtained copies of the forms and interviews which had resulted from the Claimants' application for their visit visa. Having done so, he took into account the facts before him in order to decide whether the Claimants should be allowed to remain. He decided that there was no provision enabling them to remain under the Immigration Rules. The Adjudicator agreed, and there has been no appeal against that element of his decision. The Secretary of State also decided that there were no human rights grounds upon which the Claimants should be allowed to remain in the United Kingdom with their parents. The Adjudicator agreed about that as well, and again there has been no appeal against that element of his decision.
6. However, between those two parts of the Secretary of State's decision, he considered another matter, which was whether the Claimants should be allowed to remain under what is called the Carers Concession. We shall look in a little bit more detail shortly into the process by which the Secretary of State decided that that Concession should not be applied to the Claimants. But, in any event, the Adjudicator decided that the Secretary of State's process was defective in law because, in the Adjudicator's view, he had not applied his published policy.
7. The Adjudicator wrote this:

"27. I find that the decision taken by the Respondent outside the Immigration Rules has failed to take into account of or give effect to his own published policy since he appears to have considered the exercise of his discretion under the Concession for Carers only on the basis of whether it provides for a person to be granted indefinite leave to remain which of course is what the First Appellant and the Second Appellant were seeking. However, even if they were seeking something that was outside the scope of the Concession, they are still entitled, on the basis of the facts found by me, to have had their applications considered within the permitted parameters of the Concession.

...

31. ... I am satisfied on the balance of probabilities that, for the reasons and to the extent that I have already stated, the decision taken by the Respondent outside the Immigration Rules was not in accordance with the law in that it failed to take account of or give effect to the Respondent's own published policy and to that extent the appeal will be allowed.

### **DECISION**

32. **I allow the appeal to the extent that it be remitted to the Respondent for a decision to be made under and to the extent allowed by the Concession relating to Carers in accordance with the facts found by me in this appeal."**
8. The Secretary of State's grounds of appeal assert that the Adjudicator should not have determined the appeal in that sense because the Secretary of State had already considered and refused the application under the Carers Concession. The grounds go on to assert that, in any event, the Claimants are and were unable to comply with the pre-conditions for the exercise of discretions under that Concession.
9. The relevant part of the Explanatory Statement follows the Secretary of State's consideration of the Claimants' case under the Immigration Rules and reads as follows:
- "3.4 The Secretary of State then considered the application exceptionally outside the Immigration Rules. Under the carers concession, applicants can be granted exceptional leave to remain for a period of three months to enable alternative care arrangements to be made before the applicant leaves the United Kingdom. However, the concession does not provide for a person to be granted indefinite leave to remain to care for a sick or disabled relative. Therefore the Secretary of State is not satisfied that the appellants meet the terms of the concession for carers and he is not prepared to exercise his discretion in their favour."
10. As we understand it, the Adjudicator took exception to that process of reasoning because he thought (and it may well be that in certain circumstances he would have been right to think) that a person who applies generally for permission to stay because a relative is ill should be taken as applying generally for the Carers Concession. What is abundantly clear from the facts of this case, however, is that the Claimants were not applying for three months' leave to remain in order to enable alternative care arrangements to be made. Indeed, as the Adjudicator found, alternative care arrangements were available. It is quite clear that the Claimants sought, as we have indicated, not a definite short period but an indefinite period of stay here.
11. In those circumstances, we are unable to see that the Secretary of State erred in taking the terms of the Claimants' application against them in considering whether the Carers Concession should be applied to them. What he had before him was an application which was so contrary to the thinking behind the Carers Concession that he was right to say that the Carers Concession could not be

applicable to these Claimants.

12. As we have said, in a different case it might be that a more general application should be considered within the Carers Concession: and it may be that the Secretary of State will wish to look again at any standard paragraphs that he uses in Explanatory Statements for these purposes. But, so far as this case is concerned, the application was not one which was capable of falling within the Carers Concession and the Secretary of State's refusal to apply that Concession to these Claimants was amply justified.
13. We should say that if we had any doubts about that conclusion, which we do not, they would have been resolved by the fact that we have not been told that during the period – now over four years – in which the Claimants have been in the United Kingdom, they have made any attempt to secure alternative arrangements for their parents and then leave the United Kingdom. We are sorry to have to record that in fact (.....) died on 24 August 2003.
14. For the reasons we have given, we have concluded that the Secretary of State's principal ground is made out. The Adjudicator erred in law in allowing the appeal to the extent that he did. We substitute for his determination a decision that the Claimants' appeal to the Adjudicator be dismissed on all grounds.

C M G OCKELTON  
DEPUTY PRESIDENT