

30.10.03

IF (Immigration – Elderly – Descendant – Evidence  
Required) Philippines [2003] UKIAT 00119

**IMMIGRATION APPEAL TRIBUNAL**

Heard at Field House  
On: 13 August 2003  
Prepared: 15 August 2003

Before

**Mr Andrew Jordan**  
**Prof BL Gomes Da Costa JP**

Between

Claimant

and

The Entry Clearance Officer at Manila

Respondent

For the claimant: Mr P Warburton, IAS  
For the Secretary of State: Mr G. Phillips, HOPO

**DETERMINATION AND REASONS**

1. The appellant is a national of the Philippines who appeals against the decision of an adjudicator, Mr W.E. Handbury following the hearing on 17 January 2003 where he dismissed the claimant's appeal against the decision of the Entry Clearance Officer at Manila to refuse the claimant's application for leave to enter the United Kingdom for the purposes of settlement.
2. The claimant was born on 28 November 1920 and is 82 years old. Her husband died in 1998 and, since that time, she has lived with her daughter Thelma in the Philippines where she has spent her entire life. She has another daughter, Mrs Milagros Exon, the sponsor, who is a married woman, a British citizen, although born in the Philippines. She lives in Eastbourne with her family.
3. The application fell to be considered under the terms of paragraph 317 of HC 395. There was only one issue before the adjudicator and that was whether the claimant was mainly dependent financially on her daughter, Mrs Exon, in United Kingdom.

4. "Financially" in the words of the sub-paragraph means money or money's worth, and someone whose needs for accommodation, clothing, food and other necessities, including social comfort and support in old age, are met by another is financially dependent on that person. In the case of the claimant, she lives with Thelma, who is 50 years of age and has three children. They live in a house that is only partially completed. Her sole source of income is from a sari-sari shop that produces about 200 pesos per week. In a witness statement produced by her on 8 January 2003 she stated that it was barely enough to live on and not enough to pay for the upkeep of her mother. Jesusa, one of her sons, also made a statement to the effect that he is a college student and cannot contribute financially towards the financial needs of his grandmother.
5. In the course of paragraph 7 of his determination, the adjudicator relied upon the fact that the claimant was the owner of a fish pond that produced an income of 100,000 pesos a year. It is now clear that the adjudicator misunderstood the position, almost certainly because the claimant, who is somewhat confused, gave misleading answers to the Entry Clearance Officer during the course of her interview. Documentary evidence was produced by the sponsor and her husband to establish that the fish pond is leased to the sponsor for 60,000 pesos a year. The income from it belongs to the sponsor, although it has not made money in the last couple of years. The sponsor gave evidence to this effect to the adjudicator. The adjudicator found the sponsor and her husband to be truthful witnesses.
6. The sponsor provides the claimant with considerable financial support. The adjudicator found that this amounted to £1500. However, the adjudicator did not take into account additional sums of money referred to in paragraph 5 of the grounds of appeal. The sponsor also stated in her evidence that she sponsors Thelma's daughter at school because her mother was unable to do so.
7. We are satisfied that the claimant is mainly dependent financially on her daughter, Mrs Exon, who is now sponsoring her application to come to the United Kingdom. The accommodation that is provided by Thelma, whilst going into the reckoning, does not render the claimant mainly financially dependent upon Thelma. The contributions made by the sponsor more than cover the financial costs of maintaining the claimant. Indeed, it is apparent that the sponsor's contributions act as a substantial subsidy to her sister's household.
8. This is sufficient to dispose of the appeal. Mr Warburton, however, on behalf of the claimant, made an additional point. He referred as to the Immigration and Nationality Directorate's IDI, chapter 8, section 6 dealing with dependent relatives. He drew our attention to paragraph 3.2 entitled *Further Guidance*:

*“Where the applicant is over the age of 65 detailed enquiries will not be necessary. However the sponsor should still be requested to complete a RON112 (sponsorship declaration form).”*

The sponsor completed the required form.

9. Mr Warburton submits that this indicates that the Home Office adopts a more relaxed attitude to the requirements of paragraph 317 in the case of relatively elderly dependent relatives. It does not, of course, mean that the requirements of the Rules are suspended or waived. Indeed, as appears from paragraph 3.1, case workers are reminded to satisfy themselves that the claimant is financially mainly dependent on the relative present and settled in the United Kingdom. Consequently, the Entry Clearance Officer was required to be satisfied as to the requirements of paragraph 317. Nevertheless, in order for the IDI to have some meaning, we think that the policy requires the decision maker to avoid an over-rigorous approach when requiring evidence to be produced by the claimant and the sponsor. We are not satisfied that the Entry Clearance Officer in Manila adopted an unreasonable attitude towards the production of documentary evidence in support of the claim. In the circumstances, we do not consider that the Entry Clearance Officer acted in breach of the procedure suggested in the IDI. The claimant was still required to prove her case. Consequently, we do not consider that the adjudicator was in error by not allowing the appeal because of an alleged procedural irregularity. Nevertheless, we remain satisfied that the adjudicator came to the wrong overall the conclusion and that this appeal should be allowed.

Decision: The claimant's appeal is allowed. We direct that the Entry Clearance Officer grant the claimant leave to enter the United Kingdom in the capacity sought.

Andrew Jordan  
Vice President  
15 August 2003