



Immigration law, human rights, and adult dependent relatives

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What we will cover

- A. Context to the ADR Rules
- B. Out of country ADRs: the Rules, policy guidance & caselaw
- C. ADRs already in the UK
- D. Private Life App PL (*previously 276ADE(1)(vi)*)
- E. Special considerations

KEY:

Adult Dependent
Relative = ADR

Leave to Enter = LTE

Leave to Remain = LTR

Entry Clearance = EC

Not all family life is equal: adult family relationships

Recent ADR LTR case of *Mobeen v SSHD* [2021] EWCA Civ 886, Carr LJ summarised now well-established line of authority:

45. Whether or not family life [*in the case of adults*] exists is a fact-sensitive enquiry which requires a careful assessment of all the relevant facts in the round. Thus it is important not to be overly prescriptive as to what is required and comparison with the outcomes on the facts in different cases is unlikely to be of any material assistance.
46. However, the case law establishes clearly that love and affection between family members are not of themselves sufficient. There has to be something more. Normal emotional ties will not usually be enough; further elements of emotional and/or financial dependency are necessary, albeit that there is no requirement to prove exceptional dependency. The formal relationship(s) between the relevant parties will be relevant, although ultimately it is the substance and not the form of the relationship(s) that matters. The existence of effective, real or committed support is an indicator of family life. Co-habitation is generally a strong pointer towards the existence of family life. The extent and nature of any support from other family members will be relevant, as will the existence of any relevant cultural or social traditions. Indeed, in a case where the focus is on the parent, the issue is the extent of the dependency of the older relative on the younger ones in the UK and whether or not that dependency creates something more than the normal emotional ties.
47. The ultimate question has been described as being whether or not this is a case of "*effective, real or committed support*" (see *AU* at [40]) or whether there is "*the real existence in practice of close personal ties*" (see *Singh 1* at [20]).

Not all family life is equal: LTE vs LTR

SS (Congo) v SSHD [2015] EWCA Civ 387; [2016] 1 All E.R. 706

38. Secondly, however, what is in issue in relation to an application for LTE is more in the nature of an appeal to the state's positive obligations under Article 8 referred to in Huang at para. [18] (a request that the state grant the applicant something that they do not currently have – entry to the United Kingdom and the ability to take up family life there), rather than enforcement of its negative duty, which is at the fore in LTR cases (where family life already exists and is currently being carried on in the United Kingdom, and family life or any private life established in the United Kingdom will be directly interfered with if the applicant is removed). This means that the requirements upon the state under Article 8 are less stringent in the LTE context than in the LTR context. It is not appropriate to refer to the LTR Rules and the position under Article 8 in relation to LTR, as Mr Drabble does, and seek to argue that Article 8 requires that the same position should apply in relation to applications for LTE.

Not all family life is equal: LTE vs LTR

Language in *Ribeli v ECO* [2018] EWCA Civ 611 illustrative of general difficulties:

- South African appellant with significant physical difficulties
- FTT allowed appeal but UT set aside the determination and dismissed her appeal
- Court of Appeal also dismissed her appeal

“The crucial point (and it is a powerful point as a matter of common sense as well as a matter of law) is that the Appellant's daughter could reasonably be expected to go back to South Africa to provide the emotional support her mother needs as well as to provide practical support...[A]t the end of the day, what this case is about is the choice which Ms Steenkamp has exercised and wishes to be able to continue to exercise of living and working in a major international centre like London rather than in South Africa, which is her own country of origin. She is entitled to exercise that choice. But, in those circumstances, the UT cannot be faulted for having come to the conclusion that any interference with the Appellant's right to respect for family life conforms to the principle of proportionality.”

at [70] per Singh LJ

The ADR Rules under Appendix FM: background

- Appendix FM came into force on 9 July 2012, replacing most of Part 8 to “*unify consideration under the rules and Article 8, by defining the basis on which a person can enter or remain in the UK on the basis of their family or private life*”
- Specified Evidence requirements found in Appendix FM-SE paras.33-37
- Policy Guidance found here: [Family Policy: Adult dependent relatives, v.3.0, 24 January 2022](#)
- For ADRs represented a significant and very restrictive change:
 - No longer just had to show financial dependency on UK Sponsor
 - Much more onerous dependency requirements
 - No option to qualify for LTR from within the UK
- See JCWI 2014 ‘Report on the Impact of the Adult Dependent Relatives Rules on Families and Children’ [here](#)
- [Home Office ADR Review](#) conducted in 2016 which gives a depressing overview of how the restrictions have impacted in terms of numbers

The ADR Rules under Appendix FM

EC-DR.1.1. *The requirements to be met for entry clearance as an adult dependent relative are that-*

(a) the applicant must be outside the UK;

(b) the applicant must have made a valid application for entry clearance as an adult dependent relative;

(c) the applicant must not fall for refusal under any of the grounds in Section S-EC: Suitability for entry clearance; and

(d) the applicant must meet all of the requirements of Section E-ECDR: Eligibility for entry clearance as an adult dependent relative.

E-ECDR.1.1. *To meet the eligibility requirements for entry clearance as an adult dependent relative all of the requirements in paragraphs E-ECDR.2.1. to 3.2. must be met.*

The ADR Rules: *'Relationship to the Sponsor'*

E-ECDR.2.1-2.3

- Must be aged 18 years or over
- Parent, grandparent, sibling, or child of a person in the UK (“the Sponsor”)
- The Sponsor is over 18 and either a British citizen, settled in the UK, or a person with refugee leave/humanitarian protection
- Parent/grandparent cannot be in a subsisting relationship unless with another parent/grandparent of the Sponsor who is applying at the same time
- *Appendix FM-SE para.33. Evidence should take the form of birth or adoption certificates, or other documentary evidence.*

The ADR Rules: *'long-term personal care'*

E-ECDR.2.4

E-ECDR.2.4. The applicant or, if the applicant and their partner are the sponsor's parents or grandparents, the applicant's partner, must **as a result of age, illness or disability** require **long-term personal care** to perform **everyday tasks**.

HO Guidance:

As a result of age, illness or disability, the applicant must require long-term personal care to perform everyday tasks, for example washing, dressing and cooking. This means that they must be incapable of performing such everyday tasks for themselves.

This situation may have been arrived at recently – such as the result of a serious accident resulting in long-term incapacity – or it could be the result of deterioration in the applicant's condition over several years.

***Ribeli* at [47]:** there can be such a thing as unmet needs i.e. the fact that a person's needs are not being met does not mean that they do not have those needs. But burden on ADR to prove unmet needs

The ADR Rules : *'long-term personal care'*

App FM-SE

Paragraph 34. Evidence that, as a result of age, illness or disability, the applicant requires long-term personal care should take the form of:

- (a) Independent medical evidence that the applicant's physical or mental condition means that they cannot perform everyday tasks; and
- (b) This must be from a doctor or other health professional.

HO Guidance refers to little-used provision under paragraphs 36 to 39 Rules: *the ECO has the power to refer the applicant for medical examination and to require that this be undertaken by a doctor or other health professional on a list approved by the British Embassy or High Commission.*

The ADR Rules: ‘*required level of care*’

E-ECDR.2.5

E-ECDR.2.5. The applicant or, if the applicant and their partner are the sponsor’s parents or grandparents, the applicant’s partner, must be **unable, even with the practical and financial help of the sponsor, to obtain the required level of care in the country where they are living**, because-

- (a) it is not available and there is no person in that country who can reasonably provide it; *or*
- (b) it is not affordable.

Britcits v SSHD [2017] EWCA Civ 368; [2017] 1 WLR 3345 at [59] now reflected in Home Office policy guidance:

*“the provision of care in the home country must be **reasonable both from the perspective of the provider and the perspective of the applicant**, and the standard of such care must be what is required for that particular applicant. It is possible that insufficient attention has been paid in the past to these considerations, which focus on what care is both necessary and reasonable for the applicant to receive in their home country. Those considerations **include issues as to the accessibility and geographical location of the provision of care and the standard of care**. They are **capable of embracing emotional and psychological requirements verified by expert medical evidence**. What is reasonable is, of course, to objectively assessed.”*

(per Master of the Rolls; emphasis supplied)

The ADR Rules: *'no person who can reasonably provide care'*

- Guidance on who can 'reasonably' be expected to provide care is incredibly wide:
 - a close family member
 - a wider family member, friend or neighbour,
 - another person e.g. a home-help, housekeeper, nurse, carer or home
- Family members in the ADRs country might be expected to pool resources
- Presumption in Guidance that fact a person or organisation was providing care may suggest they can continue to do so unless evidence as to temporary nature of that care or a change in circumstances
- Must be 'reasonable' both from perspective of the provider and the ADR applicant
- In particular relevant cultural factors to be taken into account

The ADR Rules: *'care not/no longer available'* or *'not affordable'*

Appendix FM-SE

35. Independent evidence that the applicant is unable, even with the practical and financial help of the sponsor in the UK, to obtain the required level of care in the country where they are living should be from:

- (a) a central or local health authority;
- (b) a local authority; or
- (c) a doctor or other health professional.

36. If the applicant's required care has previously been provided through a private arrangement, the applicant must provide details of that arrangement and why it is no longer available.

37. If the applicant's required level of care is not, or is no longer, affordable because payment previously made for arranging this care is no longer being made, the applicant must provide records of that payment and an explanation of why that payment cannot continue. If financial support has been provided by the sponsor or other close family in the UK, the applicant must provide an explanation of why this cannot continue or is no longer sufficient to enable the required level of care to be provided.

The ADR Rules: *‘care can only be provided in the UK by a relative’*

Thakrar (Cart JR; Art 8: value to community) [2018] UKUT 00336 (IAC)

“The important point is that the respondent’s policy specifically requires everyone, rich and poor alike, to show that the requisite care can only be provided in the United Kingdom by a relative here. It is not enough that there will be no recourse to public funds.”

- Illustrates catch-22 situation for ADR applications:
 - if Sponsor can afford to pay for their care in the UK, it will be difficult to show they cannot pay for their care in their own country (absent cogent evidence that the specific care required is not available or adequate for the ADR’s specific needs)
 - If Sponsor cannot afford to pay for their care in the ADR’s country, then likely to be difficult to show that care can be provided in the UK without recourse to public funds

The ADR Rules: *'No recourse to public funds'*

E-ECDR.3.1. The applicant must provide evidence that they can be adequately maintained, accommodated and cared for in the UK by the sponsor without recourse to public funds.

- No need to meet minimum financial requirements
- *'Maintenance'* as defined para.6 Rules i.e. income/funds must equal income support after housing costs, income tax & NI contributions
- Cannot come from a third party but cash savings from a third party *gift* will be if in the Sponsor's bank account and in their control
- Accommodation owned or occupied exclusively by Sponsor (although not a legal term of art – *KJ ('Own or occupy exclusively') Jamaica* [2008] UKAIT 00006
- Subject to overcrowding/public health considerations

The ADR Rules: *'Sponsor undertaking'*

E-ECDR.3.2. If the applicant's sponsor is a British Citizen or settled in the UK, the applicant must provide an undertaking signed by the sponsor confirming that the applicant will have no recourse to public funds, and that the sponsor will be responsible for their maintenance, accommodation and care, for a period of 5 years from the date the applicant enters the UK if they are granted indefinite leave to enter.

- Undertaking covers 5 years even where ADR granted ILR during that period

The ADR Rules : expected evidence for maintenance/accommodation requirements

HO Guidance

In addition, in all cases the applicant must provide evidence from the sponsor that the sponsor can provide the maintenance, accommodation and care required, in the form of any or all of the following:

- original bank statements covering the last 6 months
- other evidence of income – such as pay slips, income from savings, shares, bonds – covering the last 6 months
- relevant information on outgoings, for example Council Tax, utilities, and on support for anyone else who is dependent on the sponsor
- a copy of a mortgage or tenancy agreement showing ownership or occupancy of a property
- **planned care arrangements for the applicant in the UK (which can involve other family members in the UK) and the cost of these (which must be met by the sponsor, without undertakings of third party support)**

Immigration Rules: '*Leave granted*'

Leave granted in line with Sponsor:

- British Citizen /person settled in the UK = ILE
- Limited leave to remain = limited leave to expire at same time as Sponsor's
- Re-apply for further limited leave at the same time as the Sponsor *if* ADR still continues to meet substantive requirements (and the suitability provisions) AND still no recourse to public funds

Can apply under R-ILRDR *et seq* for indefinite leave to remain as an ADR but only if already in UK with valid LTR as an ADR

Sponsor must now be present and settled OR have made an application for ILR

When ADR is in the UK seeking LTR, not applying for EC from outside the UK

Appendix FM provides no rubric for LTR as ADR of British citizen or person settled in the UK. App FM provides only for EC, which statute defines as ‘a visa, entry certificate, or other document which, in accordance with the immigration rules , is to be taken as evidence of a person’s eligibility for entry into the United Kingdom...’ (s33(1) IA 1971)

Continuity or change? Former provision (para 317) pre 9 July 2012

317(i) parent or grandparent

- (a) divorced, widowed, single or separated aged 65 years +; or
 - (b) parents or grandparents together of whom at least one is aged 65 +; or
 - (c) parent or grandparent aged 65 + who has entered into a second relationship of marriage or civil partnership but cannot look [there] for financial support; and... the person settled in the United Kingdom is able and willing to maintain the person or any partner or child who would be admissible as a dependant; or
 - (d) parent or grandparent under the age of 65 if living alone outside the United Kingdom in the most exceptional compassionate circumstances; or
 - (e) parents or grandparents travelling together who are both under the age of 65 if living in the most exceptional compassionate circumstances; or
 - (f) the son, daughter, sister, brother, uncle or aunt over the age of 18 if living alone outside the United Kingdom in the most exceptional compassionate circumstances;
- and

317 +financially wholly or mainly dependent +can be maintained and accommodated adequately w/out recourse to public funds

Now, no express provision for ADRs to seek LTR as opposed to EC BRITCITS v SSHD (endorsed (2021) in Mobeen, §39)- challenge to consistency of Appendix FM scheme for ADRs with article 8 ECHR dismissed-

39. These rules were considered in Britcits upon a judicial review challenge to their lawfulness. The claimant charity contended, amongst other things, that the rules were incompatible with Article 8. The claim failed. As for Article 8, it was held i) that family life engaging Article 8 did not exist in every case where a UK sponsor wanted to bring an elderly parent to the UK in order to look after him/her; ii) that the new rules would not result in a disproportionate outcome in virtually all cases where Article 8 was engaged; and iii) that significant weight was to be given to the prior consultation, parliamentary debate and approval of the policy and objectives of the new rules...

Underlying policy

BRITCITS v SSHD (1)

§58 policy=1 *'reduce the burden on the taxpayer for [health and social care] to those ADRs whose needs can reasonably and adequately be met in their home country'*; 2 ensure that only ADRs whose needs can only be met in UK are granted status: *'The latter is intended to avoid disparity between ADRs depending on their wealth and to avoid precariousness of status occasioned by changes in the financial circumstances of ADRs once settled here.'*

BRITCITS v SSHD (2)-

no automatic/assumed art 8 link- §74 *‘As Sedley LJ said in Kugathas at [18], [24] and [25] with regard to an adult, neither blood ties nor the concern and affection that ordinarily go with them are, by themselves or together, enough to constitute family life; there is no presumption that a person has a family life, even with the members of a person's immediate family. The court has to scrutinise all the relevant factors. There must be something more than normal emotional ties.’*

*BRITCITS v SSHD (3)- art 8 outside the Rules - §88 '(There **might be some scope in the specific circumstances of a particular case for seeking leave to enter or leave to remain outside the rules in reliance on Article 8 rights, as explained by Laws LJ in AM (Ethiopia) v Entry Clearance Officer [2008] EWCA Civ 1082; [2009] Imm AR 254, at [39], and by Baroness Hale and Lord Carnwath in MM (Lebanon) at paras. [57] and [58]; but it is unnecessary to say more about this in the context of the challenge to the ADR rules themselves in this case).***

GEN 3.2 (1)

...where an application for entry clearance or leave to enter or remain made under this Appendix, or an application for leave to remain which has otherwise been considered under this Appendix, does not otherwise meet the requirements of this Appendix or Part 9 of the Rules, the decision-maker must consider whether the circumstances in sub-paragraph (2) apply.

GEN 3.2(2)

Where sub-paragraph (1) above applies, the decision-maker must consider, on the basis of the information provided by the applicant, whether there are exceptional circumstances which would render refusal of entry clearance, or leave to enter or remain, a breach of Article 8..., because such refusal would result in unjustifiably harsh consequences for the applicant, their partner, a relevant child or another family member whose Article 8 rights it is evident from that information would be affected by a decision to refuse the application.

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Guiding principles for LTR application by ADR (1)

-Applicant must make good proposition that art 8 family life arises (*Kugathas, Britcits* §74, etc);

-underlying policy re health and social care (*Britcits*, §58) given 'appropriate weight' (*Hesham Ali v SSHD* [2016] UKSC 60; [2016] 1 WLR 4799, §44, 50)

-refusal would lead to 'unjustifiably harsh consequences' for relevant person (GEN.3.2(2))

-treat App FM E-ECDR requirements as guide

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Guiding principles for LTR application by ADR (2)

-*'Queue jumping'*- on an in-country application, important to show conduct prior to application is not motivated by desire to avoid seeking EC out of country- rather than for instance change in health situation, or appreciation of it, or change in country situation, while in UK.

NB R (Alam) v SSHD [2023] EWCA Civ 30- restricted reading of R (Agyarko) v SSHD [2017] UKSC 11; [2017] 1 WLR 823, §51 per Lord Reed 'If, on the other hand, an applicant - even if residing in the UK unlawfully - was otherwise certain to be granted leave to enter, at least if an application were made from outside the UK, then there might be no public interest in his or her removal. The point is illustrated by the decision in Chikwamba v [SSHD [2008] UKHL 40; [2008] 1 WLR 1420].

Supplementary- art 8 Private Life (1)

An ADR in the UK may be able to rely on private life

Note- as with family life no assumption article 8 applies

HC395 Appendix Private Life (ex para 276ADE)

PL 5.1. Where the applicant is aged 18 or over on the date of application: (a) the applicant must have been continuously resident in the UK for more than 20 years; or (b) where the applicant has not been continuously resident in the UK for more than 20 years, the decision maker must be satisfied there would be very significant obstacles to the applicant's integration into the country where they would have to live if required to leave the UK.

Supplementary- art 8 Private Life (2)

‘Very significant obstacles... to the applicant's integration...’- Kamara v. SSHD [2016] EWCA Civ 813; [2016] 4 WLR 152, ‘not confined to the mere ability to find a job or to sustain life while living in the other country [requiring]... a broad evaluative judgment to be made as to whether the individual will be enough of an insider in terms of understanding how life in the society in that other country is carried on and a capacity to participate in it, so as to have a reasonable opportunity to be accepted there, to be able to operate on a day-to-day basis in that society and to build up within a reasonable time a variety of human relationships to give substance to the individual's private or family life.

Supplementary- art 8 Private Life (3)

Scope of '*very significant obstacles*'- below, a (very) misdirected HO response on review

'The crux of the A's submissions relates to her health and care requirements and the inability to obtain the required level of care in Albania. However, the R's guidance on 'very significant obstacles' does not direct that consideration must be given to an applicant's medical conditions or care needs when assessing such claims.'

Supplementary- art 8 Private Life (4)

Private life: caseworker guidance (v1/0, 20 June 2022), section 'Assessing whether there are "very significant obstacles to integration" into the country of return':

You must consider all relevant factors in the person's background and the conditions they are likely to face in the country of return in making their decision as to whether there are very significant obstacles to integration.

Supplementary- art 8 Private Life (5)

Private life: caseworker guidance (v1/0, 20 June 2022), 'Assessing whether there are "very significant obstacles to integration" into the country of return':

You will need to consider any specific obstacles raised by the applicant. These obstacles will need to be assessed individually as well as accumulatively. While individual factors may be insufficient alone, several factors considered together "in the round" may create a very significant obstacle to integration outside the UK.

Special considerations (1): Children

GEN.3.3(1) Best interests of *any relevant child* as a primary consideration

GEN 3.3(2) “*relevant child*” = under 18 at date of app and evident from info with app that they would be affected by a refusal

Adult child admitted as a minor but now over 18 covered by Part 8, para.298(vii):

- Must meet English language /KoLL requirements
- Must not be living *independent* life
- Recognition that family life doesn't automatically end once age of majority reached: e.g. *Etti Adegbola v SSHD* [2009] EWCA Civ 1319 per Pill L.J. at §23).

Special considerations (2): Gurkha dependents

- Former serving Gurkhas discharged before 1997 found to have suffered historic injustice as deprived of settlement rights compared to other non-British Commonwealth veterans: *R (Limbu)* EWHC 2261 (Admin),
- In 2004 Government introduced policy aiming to remedy injustice
- In 2015 policy was amended extending settlement rights to adult dependent children of Gurkha veterans as a result of judgment in *R (Gurung)* [2013] EWCA Civ 8: [Gurkhas discharged before 1 July 1997 and their family members](#)
- If the Gurkha can show that *but for the historic injustice* he would have settled in the UK at a time when his child would have been entitled to settlement as a dependent child “*this will ordinarily determine the outcome of the Article 8 proportionality assessment in the Appellant’s favour, where the matters relied upon...consist solely of the public interest in maintaining a firm immigration policy*” (guidance at page 16, implementing *Gurung* at [32])

Special considerations (2): Gurkha dependents contd.

- Adult dependent children of former Gurkha veterans do not have to satisfy onerous requirements of App.FM
- Just have to show dependence
- “*Dependence*” means “*real support*”, “*effective support*” or “*committed support*”; there is no requirement for financial dependency which is unusual or exceptional: *Rai v ECO Delhi* [2017] EWCA Civ 320
- Policy Guidance says must be aged 18-30 but the critical question is whether family life has endured beyond the parent/s departure to the UK i.e. leave can be granted where older than 30 years old
- Previous marriage/independence not fatal either if can demonstrate dependence exists at the time of the application

Special considerations (3): *Surinder Singh* swansong

- Historically less onerous route: British Citizen who had lived in EEA State in accordance with EU law could apply for adult family members who were not EEA nationals to return with/join them in UK
- Was dealt with by Reg.9 of the EEA Regulations 2016
- Must have resided together in the EEA State; residence must have been genuine (relevant factors set out in Reg.9(3))
- SSHD can rely on Reg.9(4) to refuse if she can prove residence was a *“means for circumventing any immigration law”*
- Deadline for *Surinder Singh* applications was **29 March 2022** so now only relevant on appeal; thereafter all applications under App.FM

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