

LIRA'S IMMIGRATION CORNER

THE CHANGES made to the Immigration rules in July 2012 has severely limited the number of applicants who would qualify under the Adult Dependent Route (ADR). The Home Office in December 2016 published a review stating that visas issued to parents and grandparents decreased from the average of 2,325 per year to an average of 162 per year following the change in the rules.

There may be a revival of the ADR given the humanitarian crisis that presently face countries such as Ukraine and Afghanistan.

The Law

The applicant:

1. is applying from outside of the UK
 2. is sponsored by a person settled in the UK, or present as a refugee
 3. is an adult and direct relative of the sponsor namely children over-18, parent, grandparents or brother and sisters.
 4. requires 'long-term personal care to perform everyday tasks' (intended as basic essential activities) due to age, illness or disability
 5. can be maintained and accommodated in the UK without recourse to public funds.
 6. is of good character
- AND:
7. demonstrates that the care must be **unavailable or unaffordable** in the country in which they live, even with the help of the sponsor.

The Adult Dependent Route

The first point to note is that it is an application from abroad, so if your relative is already in the UK, you cannot submit an application under the ADR.

The second factor to consider is that of evidence. The Home Office in fact specify as part of the **mandatory** evidential requirements (Appendix FM-SE) that applicants provide:

- (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.*

The Home Office clearly require evidence to show that the applicant's health warrant substantial care. This means that submitting a medical note stating the medication prescribed to the applicant is simply not good enough.

TIP:

Applicants should also consider providing a psychiatric or a psychologist report setting out the relative's mental state. This may be particularly useful for widowed parents who have been suffering from depression due to separation from their family in the UK.

The third issue of note is the requirement that care is **unavailable** in the country in which they live, even with the help of

the sponsor. This condition is often the most problematic. It is not unusual for the Home Office to contend that the sponsor / family member in the UK should pay for carers or that the applicant can go into a care home. The Home Office provide examples of the type of evidence they expect:

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.



BY LIRA
SIMON
CABATBAT

The "unavailable" requirement has earned the ADR the description that it is "**a ban masquerading as a rule**" as it is difficult (some say impossible) to satisfy the Home Office that care for medical conditions is "unavailable" in most countries, save perhaps Ukraine and Afghanistan where there is a gamut of evidence that their medical facilities have been severely compromised.

TIP:

The Home Office are often literal when interpreting this condition, which means if there are possible care homes for the applicant they will tend to latch on this point. It is important that applicants provide evidence that they have had regard to this issue and list the care homes they have considered and state why each one was not suitable. The family and societal dynamics in the Philippines has meant that there are far fewer care homes in the Philippines than in the UK. From the limited choices, applicants should then distinguish (for each) why they are not suitable.

The fourth issue, that care is "**unaffordable**" in the country in which they live, even with the help of the sponsor, makes the ADR

rare amongst immigration routes as it appears to penalise sponsors with funds to support their family member. Yet, applicants must also show that they can be maintained and accommodated in the UK without recourse to public funds.

TIP:

When looking at care homes for the above exercise, make sure you also request information about their costs. Set this against the sponsor's income and ensure that account is taken of the sponsor's other commitments such as other family members in the UK. The condition requires that care is unaffordable for the applicant and sponsor so set out your calculations to back up your claim that care is indeed "unaffordable". In doing this, applicants must also satisfy the Home Office that they will not require public funds.

Visa Granted:

The fee for the application is **£3250.00** as of the 3rd of March 2022. There is no IHS charge. If successful, the applicant is granted indefinite leave to enter (or limited leave matching that of the sponsor if the sponsor is in the UK on asylum or humanitarian protection). Once in the UK applicants with Adult Dependant visas may use NHS services but they must not claim public funds such as Universal Credit or Housing Benefit. ■

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Article written by Ms Lira Simon Cabatbat. Lira has been in practice as an Immigration and Family solicitor for over 26 years and is the principal of Douglass Simon Solicitors. She is an accredited Resolution (First for Family) specialist and is a fluent Tagalog speaker. Douglass Simon (tel. 0203 375 0555 • email: cabatbat@douglass-simon.com) has been established for over two decades and has been a centre of excellence, especially in the areas of Immigration, Family and Probate. We have received commendations from judges and clients alike. Please refer to our website for more details.